

LABOUR ADMINISTRATION

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LABOUR ADMINISTRATION

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Information and reports on the application
of Conventions and Recommendations

General Survey
on the Labour Administration Convention (No. 150) and
Recommendation (No. 158), 1978

Report of the Committee of Experts on the Application of Conventions
and Recommendations (articles 19, 22 and 35 of the Constitution)

LABOUR ADMINISTRATION

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INTRODUCTION

I. Background to the survey

1. In accordance with article 19(5)(e) and (6)(d) of the ILO Constitution, the Governing Body of the International Labour Office decided at its 258th Session (November 1993) to request governments of member States which have not ratified the Labour Administration Convention, 1978 (No. 150), to supply reports on it in 1996, and to request governments of all member States to supply reports on the accompanying Labour Administration Recommendation, 1978 (No. 158). These reports, in addition to the reports under articles 22 and 35 of the ILO Constitution from countries bound by the Convention, have enabled the Committee of Experts on the Application of Conventions and Recommendations, in accordance with its usual practice, to prepare a General Survey.

2. This is the first General Survey to deal with Convention No. 150 and Recommendation No. 158. Other Conventions that are related to labour administration have been the subject of earlier general surveys under article 19. These concern labour inspection,¹ employment service,² employment policy,³ human resources development,⁴ freedom of association and protection of the right to organize, the right to organize and collective bargaining,⁵ all of which

¹ Labour Inspection Convention, 1947 (No. 81) (reports of the Committee of Experts on the Application of Conventions and Recommendations at the International Labour Conference (ILC), 34th Session, 1951, Report III (Part II); 40th Session, 1957, Report III (Part II); 50th Session, 1966, Report III (Part II)); in respect of the examination of ratification prospects of 17 important instruments adopted by the ILO during its 50 years of existence (53rd Session, 1969, Report III (Part II)); Convention (No. 81) and Recommendation (No. 81) on Labour Inspection, 1947; the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82); the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) (71st Session, 1985, Report III (Part 4B)).

² Employment Service Convention, 1948 (No. 88) (53rd Session, 1969, Report III (Part II)).

³ Employment Policy Convention, 1964 (No. 122) (57th Session, 1972, Report III (Part 4B)).

⁴ Convention (No. 142) and Recommendation (No. 150) on Human Resources Development, 1975 (78th Session, 1991, Report III (Part 4B)).

⁵ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (39th Session, 1956, 40th Session, 1957, 43rd Session, 1959, 58th Session, 1973, 69th Session, 1983 and 81st Session, 1994, Report III (Part 4B)).

are referred to in the Preamble of Convention No. 150, as well as tripartite consultation,⁶ social security⁷ and minimum wage fixing.⁸

3. The ILO's early and constant preoccupation with and monitoring of national systems of labour administration led the Conference, at its 50th (1966) Session, to adopt a resolution inviting the Governing Body of the ILO to call the special attention of governments to the importance of strong labour departments in the context of economic and social development. It also urged the ILO to intensify its technical cooperation work in this field and to place the matter again on the agenda of a future session of the Conference.⁹ The increased number and variety of the tasks performed by the State or its parts in the field of social and economic policy necessitated the creation at the national level of suitable forms of participatory administration in which the representative organizations of employers and workers play a greater part than previously. In 1973, taking into account the ways and means used to obtain more humane conditions of work which necessitated new approaches, including by means of new agencies, and considering the development of social security measures and institutions, the 1973 Meeting of Experts on Labour Administration¹⁰ reached the conclusion that the adoption of international standards on labour administration would not only be possible but also desirable to help solve some of the problems of labour policy. Despite the big diversity of national conditions, the experts considered it possible to elaborate sufficiently flexible standards for a generally acceptable concept of labour administration. This was the period when the State tended to take the lead in designing, creating, adopting and implementing solutions to certain major problems of labour policy, which required the development of corresponding institutional arrangements which had become so complex at times that the "labour ministry" alone could not deal with them adequately.

4. The 1973 Meeting of Experts considered that such flexible international standards on labour administration would be viable and lasting and advanced three fundamental reasons for this. First, they would help certain countries to

⁶ Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113) (61st Session, 1976), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152) (68th Session, 1982).

⁷ Social Security (Minimum Standards) Convention, 1952 (No. 102), Convention (No. 128) and Recommendation (No. 131) on Invalidity, Old-Age and Survivors' Benefits, 1967 (45th Session, 1961, and 76th Session, 1989).

⁸ Convention (No. 26) and Recommendation (No. 30) on Minimum Wage-Fixing Machinery; Convention (No. 99) and Recommendation (No. 89) on Minimum Wage-Fixing Machinery (Agriculture), 1951; Convention (No. 131) and Recommendation (No. 135) on Minimum Wage Fixing, 1970 (42nd Session, 1958 and 79th Session, 1992).

⁹ ILC, 50th Session, 1966, *Record of Proceedings*, Appendix XIV, resolution (5) concerning national labour departments and other public institutions responsible for the administration of labour matters.

¹⁰ ILC, 61st Session, 1976, Introduction to Report V(1), *Labour administration: Role, functions and organization*.

solve to some extent their difficulties in this field. Secondly, they would help protect relatively weak systems of labour administration and avoid a situation of their marginalization in national decision-making on social and economic policy for political, financial or administrative reasons. Thirdly, such an instrument would fill the gap in the standard-setting system, which had until then only dealt with segments, though very important ones, of labour administration (such as labour inspection, employment services, or minimum wage fixing machinery). Moreover only brief provisions are to be found in some Conventions or Recommendations and these are aimed essentially at ensuring that appropriate administrative measures are taken to give effect to the specific instrument. The flexibility of the international instruments adopted by the Conference in 1978 contribute to their continuing value and relevance.

II. Contents of Convention No. 150 and Recommendation No. 158

Contents of the Convention

5. Convention No. 150 represents proposals adopted by the Conference to provide for an overall system of national labour administration despite early misgivings expressed by some Government members on the advisability of adopting international standards on the subject. In the end Government members as well as Employers' and Workers' members reached agreement to prepare an instrument defining the role, functions and organization of national systems of labour administrations. By adopting standards that provide general guidelines regarding labour administration and establishing the general institutional framework needed for the preparation, administration and checking and review of national labour policy, the Organization was trying to help member States, and more particularly those that needed such help, to equip themselves with efficient administrative structures in this area. In order that account is taken of the various systems of labour administration in a world of cultural diversity and varying levels of economic and administrative development, the contents and terms that were unanimously adopted were such that they would meet general acceptance.

6. The Convention in its Article 1 defines the terms "labour administration" and "system of labour administration". Labour administration is meant to cover public administration activities in the field of national labour policy. Public administration bodies responsible for and/or engaged in labour administration as well as all the institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organizations, are to be considered as part of this system.

7. Article 2 of the Convention provides for the possibility of delegating or entrusting certain activities of the system to non-governmental organizations, particularly to employers' and workers' organizations or where appropriate to

employers' and workers' representatives. With a view to the proper coordination of the functions and responsibilities of the system, Article 9 requires that a specific governmental body ascertain and monitor the parastatal, regional or local agencies to which some labour administration activities may have been delegated. Recourse to direct negotiations between employers' and workers' organizations to regulate particular activities in the field of national labour policy is provided for by Article 3 of the Convention.

8. A Member which ratifies the Convention is required by Article 4, in a manner appropriate to national conditions, to ensure the organization and effective operation in its territory of a system of labour administration the functions and responsibilities of which are properly coordinated. In order to do that Article 10, paragraph 1, requires that the staff of the labour administration system be suitably qualified for the activities to which they are assigned and that they be independent of improper external influences. Subparagraph 2 of the same Article requires such staff to have the status, the material means and the financial resources necessary for the effective performance of their duties.

9. Article 5 provides for the principle of tripartism in the context of the system of labour administration by requiring that arrangements be made within the system for consultation, cooperation and negotiation between the public authorities and the most representative organizations of employers and workers, or where appropriate of the employers' and workers' representatives. Such tripartite arrangements should be made at the national, regional and local levels as well as different sectors of economic activity.

10. The overall functions of the system of labour administration are included in the terms of Article 6, paragraph 1, in that the functions of the competent bodies within the system are to consist, as appropriate, of responsibility for or contribution to the preparation, administration, coordination, checking and review of national labour policy, including by being the instrument of the public administration for the preparation and implementation of laws and regulations giving effect to such policy. Without being exhaustive, paragraph 2 of Article 6 of the Convention lists the principal functions that such bodies must cover, taking into account relevant international labour standards. These include participation in the preparation, administration, coordination, checking and review of national employment policy (subparagraph (a)), study and follow-up of the world of work by reviewing the situation of the employed, the unemployed and the underemployed, taking into account national laws, regulations and national practice concerning conditions of work and working life and terms of employment (subparagraph (b)), make their services available to employers and workers and their respective organizations with a view to promoting effective consultation and cooperation between public authorities and employers' and workers' organizations, as well as between such organizations (subparagraph (c)), respond to requests for technical advice from employers and workers and their respective organizations (subparagraph (d)).

11. Article 7 of the Convention provides that when national conditions so require to meet the needs of the largest number of workers, and in so far as such

activities are not already covered, each Member which ratifies the Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to workers who are not, in law, employed persons. It then lists, as examples, tenants, sharecroppers, self-employed workers in the informal sector, members of cooperatives and worker-managed undertakings, those working under systems established by communal customs or traditions.

12. The competent bodies within the system of labour administration are required by Article 8 of the Convention to contribute to the preparation of national policy in the field of international labour affairs, participate in the representation of the State with respect to such affairs and contribute to the preparation of measures to be taken at the national level with respect thereto.

Contents of the Recommendation

13. The Recommendation takes up and develops the principles contained in the Convention and provides useful guidelines for its application. It is structured in three parts — general provisions, the functions of the national system of labour administration, the organization of the system. The general provisions of the Recommendation essentially repeat the first four Articles of the Convention. The Recommendation describes the four areas in which the system of labour administration is to exercise its functions, which are labour standards, labour relations, employment and research in labour matters.

14. The competent authorities of the system of labour administration, in consultation with organizations of employers and workers, should take an active part at all stages of the preparation, development, adoption, application and review of labour standards. This should also include a system of labour inspection.

15. With respect to labour relations the Recommendation is essentially concerned with the need to encourage industrial relations by enumerating the various means by which this objective is to be attained, namely by the free exercise of the right of association, the right to organize and collective bargaining, the provision of advisory services, the development and utilization of machinery for voluntary negotiation, and by the existence of conciliation and mediation facilities within the system of labour administration.

16. In the employment area the Recommendation defines the means by which an effective employment policy could be put in place. Among the major means listed to this end are the need to coordinate the activities of the various authorities and bodies which are concerned with particular aspects of employment policy, the establishment of an effective free public employment service, assume power or sharing responsibility for the management of public funds made available for such purposes as countering underemployment and unemployment.

17. The last major function listed in the Recommendation concerns research in labour matters with a view to the fulfilment of social objectives of the system of labour administration.

18. The third part of the Recommendation deals with the organization of the system of labour administration in which the ministry of labour or another comparable body should ensure the appropriate representation of the system of labour administration in the administrative and consultative bodies in the economic and social domain. This essentially is based in the exchange of information and reports of a technical nature and consultations with the most representative organizations of employers and workers.

19. The Recommendation calls for adequate resources and suitably qualified staff to be provided to the system of labour administration to promote its effectiveness. The provision of initial and further training and the exchange of experience and information in the context of international cooperation should help maintain the level of qualification of the staff of the system.

20. With respect to the internal structure and organization of the system the Recommendation suggests the types of specialized units that the system should have. The external or field structure should be such as to ensure the effective organization and operation of the system.

III. Developments since 1978

21. There have been several changes in the prevailing wider economic and social context in which systems of labour administration are operating since the adoption of Convention No. 150 and Recommendation No. 158 by the Conference in 1978. All these changes strengthen the validity and pertinence of the conceptual basis of these instruments. The Convention and Recommendation are still as relevant and topical today as they were when they were adopted.

22. The topical and innovative role of labour administration still focuses on the notions of a "system", "national policy" concerning labour, "ministerial departments or public agencies" entrusted with the duties to ensure the coherence of the system, to ensure the active participation of the social partners in all activities of national labour policy, as well as the need to have adequate means for the effective functioning of the overall system.

23. The flexibility and relevance of the concept of labour administration noted when these instruments were adopted at a time when the prevailing economic and social context was more stable than today continues to be true despite the changes in the organization of work in enterprises and the introduction of new techniques and technologies. In fact, countries are in need of political and administrative means which could help them confront the profound changes resulting from globalization of the world economy, regional economic integration arrangements, structural adjustment programmes, pressure to reduce public expenditure, as well as a major move towards the market

economy, privatization and the restructuring of enterprises and significant progress of democracy in social affairs. Such means are well defined by the system of labour administration described by these instruments which are dynamic in content and which reflect the values the ILO stands for.

24. Today, the appropriateness and relevance of these instruments continues intact to the extent that their flexibility permits and accompanies the various adaptations made in the structures and methods of work of numerous systems of labour administration. Indeed it can be noted that there is a tendency to resort to management techniques and administrative methods oriented to the needs of the users, and the evaluation of results. These changes reinforce the validity of the concept and the principles of labour administration established by these instruments.¹¹

IV. Practical activities of the ILO

25. The ILO has developed a programme to assist governments reinforce their public administration responsible for national labour policy, including labour inspection services and employment services, and the institutional structures of tripartite consultation and cooperation, as well as to train the staff of ministries of labour and specialized services. These technical cooperation activities are financed mainly from extra-budgetary sources provided by the United Nations Development Programme (UNDP) and multilateral donors.

26. A large number of developing countries have benefited from ILO technical cooperation in the field of labour administration. A multiplicity of means are used, ranging from projects covering several years for the establishment of national and regional institutions; regional programmes or national labour administration systems; and including ad hoc interventions in the form of direct technical advisory services; visits by experts or missions to countries which intend to restructure or improve the effectiveness of their ministries of labour or improve the technical capacities and effectiveness of the specialized services of their labour administration, such as labour inspection services, employment services and the services responsible for relations with the ILO. These practical activities, which are described in Chapter III, take various forms: vocational training for the managerial and other staff of central and specialized labour administration services; training in the management of labour administration services; the organization of subregional, regional and

¹¹ In this regard see Glen Sheehan: "Labour administration: The response to the crisis", in *International Labour Review*, Vol. 131, No. 2, 1992; Roger Plant: *Labour standards and structural adjustment*; Anne Trebilcock et al.: *Towards social dialogue: Tripartite cooperation in national economic and social policy-making*, 1994; and the various reports to the Conference on related matters such as on the role of private employment agencies in the functioning of the labour markets (ILC, 81st Session, 1994, Report VI), and more recently on tripartite consultation at the national level on economic and social policy (ILC, 83rd Session, 1996, Report VI), and on employment policies in a global context (ILC, 83rd Session, 1996, Report V).

interregional meetings; and the publication of studies, research, monographs, manuals and methodological guides.

27. Reference can be made in this respect to the activities of the regional labour administration centres, which are regional institutions of the member States established in Africa, the Arab region, Asia, Latin America and the Caribbean, assisted by regional advisers and later by specialists in labour administration of the multidisciplinary advisory teams.

28. While there was a very high demand from member States for assistance in the development and reinforcement of operational and specialized services (such as information and statistics), since the establishment of the multidisciplinary advisory teams, the demand for technical assistance has increasingly been extended to consideration of the functions that the competent bodies in the system could carry out and the structures which could be introduced to obtain the necessary synergy and the management efficiency of the whole labour administration system. Indeed, tripartite missions to analyse the situation and develop technical cooperation projects have been requested to organize and reinforce labour inspection services and public employment services, as well as to train the necessary officials. Currently, requests for technical assistance cover labour administration systems as a whole. Governments of countries emerging from conflicts or civil wars request technical assistance from the ILO to rebuild and restructure their systems of labour administration. Moreover, requests for assistance from other governments tend to solicit overall assessment and review of the system of labour administration, including the role of social partners, with a view to setting the structures and mechanisms and identifying the required means.

29. Finally, reference should be made to the organization of tripartite regional workshops, tripartite seminars and other high-level meetings on various general issues, such as the establishment of networks of training centres in the field of labour administration,¹² labour administration in the service of development,¹³ the role of labour administration in the development of national labour policy,¹⁴ information and information technologies in labour administration,¹⁵ modern methods of labour administration,¹⁶ labour administration in the context of structural adjustment programmes,¹⁷ and tripartism in the improvement of social dialogue.¹⁸

¹² *Thailand*, 1985.

¹³ *Cyprus*, 1985, 1986 and 1987.

¹⁴ *Uruguay*, 1987.

¹⁵ *Cuba*, 1985; *Venezuela*, 1987.

¹⁶ *Cyprus*, 1994.

¹⁷ *Zimbabwe*, 1991.

¹⁸ *Peru*, 1991.

30. Undoubtedly the major distinguishing characteristic of ILO technical cooperation activities in the field of labour administration is the manner in which an active contribution is sought from employers and workers and their respective organizations. And it has been the ILO experience that whenever the social partners have been consulted and involved in all phases, namely the formulation, implementation and evaluation of technical cooperation projects, the objectives of such projects are promoted and their success improved.

Establishment of the Ministry of Labour and Social Affairs in Albania

In 1992 Albania adopted a democratic system, opting for the establishment of a market economy capable of generating a durable improvement in the standard of living. Its success required the transformation of economic and social structures, as well as the reform of institutional structures. Despite the increase in unemployment and the deterioration of working conditions, the country did not possess any labour institution to consolidate efforts to develop a national policy. Responsibility for labour and employment matters was shared between various ministries and institutions; no labour inspection within the meaning of Conventions Nos. 81 and 129 existed and the employment services were not adapted to the existence of a labour market.

In 1993 at the request of the Government, the ILO launched a technical assistance project to create an overall system of labour administration and to promote tripartism in Albania in order to facilitate transition to a market economy through a coherent and clearly defined national labour policy aimed at economic development. The project aimed at setting up, in consultation with employers' and workers' organizations, an efficient labour administration capable of developing national policies on labour protection, employment and vocational training.

The existing Ministry of Labour was created through this project as well as the National Labour Institution providing training, advisory and documentation services to the staff of the Ministry of Labour. Labour inspection services and two pilot employment service offices were also provided to employers' and workers' representatives. The ILO also provided direct advisory services which contributed to the drafting of the new labour legislation. By early 1996 the Ministry of Labour comprised 174 staff members at the central level and 1,600 at the regional and local levels.

A solid foundation for an organized and coherent labour administration system was thus laid. The successful implementation of the project led to the launching of a second phase in March 1996, aimed, on the one hand, at strengthening the activities already undertaken to organize a complete system and, on the other, specialized services within the Ministry and other tripartite bodies for consultation and cooperation at all levels.

Tripartite evaluation mission on the efficiency of the labour administration in Panama

Panama's Ministry of Labour and Social Welfare requested technical assistance to help it improve the quality and efficiency of its services, particularly by seeking to improve its internal organization and better management of its resources. This request was made to enable it to best fulfil its mandate, specifically to improve working conditions and to guarantee respect for workers' interests while at the same time taking into account the need to adapt to the prevailing socio-economic conditions and maintain a balanced labour market.

To meet this objective, an ILO tripartite evaluation mission¹ to assess the labour administration system's efficiency was carried out by the ILO in November 1995. This evaluation covered four basic issues: the organization and functions of the Ministry of Labour and Social Welfare, the presence and participation of workers' and employers' organizations in national labour policy-making, the means available to bodies and institutions which come under the overall responsibility of the Ministry, the staff of the labour administration system (their status, recruitment, working conditions, qualifications, training), as well as the problems and obstacles which impede the proper functioning of the system of labour administration at the national, regional and local levels.

Based on the mission's observations, possible implementation measures to reinforce the labour administration were considered and supported by several recommendations in a report discussed by high-level officials of the Ministry of Labour and Social Welfare. Following this discussion, the Ministry identified four strategic areas for improvement, namely: the development of new infrastructures; training and human resource development; computerization; and institutional development. By the end of 1996, work in this sense had begun by the services of the Ministry of Labour and Social Welfare with ILO assistance.

¹ The mission comprised a Government representative from Spain, an Employer representative from Argentina and a Worker representative from Mexico.

Self-employment promotion through employment services in Poland

In Poland, as in other countries which are going through economic transition, the steadily declining level of wage employment in the public sector has to be increasingly counterbalanced by self-employment/small business alternatives. On the other hand, opportunities exist for the creation of various services, still lacking or insufficiently developed, to be provided to individuals and enterprises. The unemployed and school-leavers have, however, to change their traditional preference for remunerated employment and they require a special technical and financial assistance not to be excluded from small business opportunities.

To this end, a project of about 2.5 years' duration¹ is assisting labour offices of six voivodships (out of 49) to provide initial information for the unemployed and school-leavers, motivate them and assist them technically and financially in close collaboration with small business development partners. The project has assisted labour offices in producing information and motivation material, including video-films and panel computer programmes, building up adequate public employment services' structures and producing guides on administrative and technical procedures, developing the know-how of employees in general through specially tailored training and organizing joint workshops with small local business promotion partners. Dissemination of positive experience of the project is carried out both nationally and internationally, e.g. a national conference and a subregional conference for transition economy countries have been organized in 1996 within the framework of the project.²

¹ US\$1,110,355; up to April 1997; financed by the Government of Switzerland.

² National conference in November and subregional conference in April, both in Gdansk.

V. State of ratification of the Convention

31. The Convention entered into force as of 11 October 1980. As of 13 December 1996 the Convention has been ratified by 39 Members. Part of the reasons for this could be found in Chapter IV below. Details of ratifications by member States and declarations of application to non-metropolitan territories are given in Appendix II. There have been no denunciations of the Convention.

32. Conventions related to labour administration have on the whole been widely ratified.¹⁹

¹⁹ The Labour Inspection Convention, 1947 (No. 81), has 119 ratifications; the Labour Inspection (Agriculture) Convention, 1969 (No. 129), has 35 ratifications; the Unemployment Convention, 1919 (No. 2), has 54 ratifications; the Employment Service Convention, 1948 (No. 88), has 80 ratifications; the Employment Policy Convention, 1964 (No. 122), has 86 ratifications; the Human Resources Development Convention, 1975 (No. 142), has 57 ratifications; the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has 117 ratifications; the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has 131 ratifications; the Tripartite Consultation (International Labour Standards) Convention, 1976

VI. Available information

33. For this survey, information available to the Committee consisted of 168 reports received from 97 member States communicated under article 19 of the Constitution. In accordance with its usual practice, it also used the information contained in the reports on ratified Conventions communicated under articles 22 and 35 of the Constitution for Convention No. 150 and the other related Conventions. The Committee also took into account the observations of several employers' and workers' organizations.²⁰ Whilst emphasizing the quality of many of the reports received, the Committee regrets that more information was not received. It thus endeavoured, following its usual practice, to supplement the information received by referring to legislation, official documents and other appropriate available sources.

VII. Outline of the survey

34. The Committee will explore the objectives, methods of application and scope of the Convention and Recommendation using the definitions of labour administration provided and relate them to the scope of the other substantive Conventions that have a direct bearing on labour administration (Chapter I). The Committee will then consider the various functions of the system of labour administration (Chapter II); to be followed by the organizational aspects of the system, including the institutional structure and its coordination; the human, financial and material means put at the disposal of the system to fulfil its tasks; review and examine the evolving role of the labour administration in the context of national, economic and social policy-making and implementation (Chapter III). Thereafter the Committee will examine the difficulties and prospects of ratification revealed by reports received for the survey (Chapter IV). It will then conclude the survey by making some final remarks.

(No. 144), has 78 ratifications; the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), has 31 ratifications; the Occupational Safety and Health Convention, 1981 (No. 155), has 27 ratifications; the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), has 100 ratifications; the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), has 52 ratifications; the Minimum Wage Fixing Convention, 1970 (No. 131) has 40 ratifications; the Statistics of Wages and Hours of Work Convention, 1938 (No. 63) has 34 ratifications; the Labour Statistics Convention, 1985 (No. 160) has 40 ratifications; as well as the various social security Conventions including their organizational and operational aspects.

²⁰ *Estonia*: Confederation of Employers' Organizations; *Finland*: Confederation of Finnish Industry and Employers (TT), Employers' Confederation of Service Industries, Central Organization of Finnish Trade Unions (SAK), Confederation of Unions for Academic Professionals; *Germany*: German Trade Federation (DGB); *Portugal*: General Workers' Union (UGT); *New Zealand*: New Zealand Council of Trade Unions (NZCTU); *United Kingdom*: Trades Union Congress.

CHAPTER I

Objectives, methods of application and scope of the instruments

I. Objectives

35. In its Preamble Convention No. 150 clearly recognizes that the ILO deals with particular aspects of labour administration matters in detail in several other instruments such as the instruments on labour inspection, employment services, human resources development and employment policy. As the Committee had occasion to point out previously,¹ Convention No. 150 provides for a coordinated and effective labour administration that ensures appropriate cooperation with employers and workers regarding activities covered in more detail by other ILO instruments. The particularity of the Convention therefore is that it establishes standards regarding the overall system of labour administration encompassing the various bodies that deal with all matters relating to labour policy, including its international aspects, the provision of services and advice to employers and workers.

36. A Convention on labour administration was from the start considered possible and indeed desirable on condition that it has a sufficiently flexible approach that recognizes the particularities of different national systems. A significant objective of the Convention and the Recommendation is the promotion of the creation of public administrative machinery to address in a coordinated and sustained way the formulation, implementation and monitoring of national labour policy. In the preparatory stages Government members from developing nations had stressed "the significance of labour administration to their economic and social development" and that "this aspect had, in itself, led many governments to improve their labour administration systems".² These standards were to help certain countries solve to some extent their institutional problems in the field of labour administration. In this sense the Committee, in the general part of its 1991 report, has indicated that in practice this Convention "... serves as a framework for much of the Office's research and related cooperation activities relating to labour administration in both developing and

¹ Report of the Committee of Experts on the Application of Conventions and Recommendations (RCE), International Labour Conference (ILC), 78th Session, 1991, Report III (Part 4A), para. 54.

² ILC, 64th Session, 1978, Report IV(1), para. 14.

industrialized countries" and that its ratification and application "... in the full meaning of the term could be the linchpin of a closer relationship, at national level, between international labour standards and technical cooperation activities".³ It was further thought at the time of the elaboration of the Convention that adopting international standards on the subject would provide "... a form of protection to any national systems of labour administration which are still weak ..." and needing "... to avoid a situation in which these systems might, for political, financial or administrative reasons, be confined to only a marginal role in decision-making on social and economic policy".⁴

II. Methods of establishment and action

37. By their very nature national systems of labour administration that set up and define the functions of public administration bodies dealing with national labour policy are, more often than not, based on laws or regulations. Ministries of labour or other comparable national bodies are examples of public bodies that are usually established by such laws. Legal texts establishing the assignment of ministerial responsibilities of the national government most frequently create a ministry or ministries that carry out and are responsible for the activities of national labour policy. The establishment of other bodies and institutional arrangements falling within the sphere of labour policy and administration may also be accomplished primarily by means of legal instruments giving them charters or their organic laws of establishment. Other bodies or institutions may be established independently by non-public or private entities such as employers' and workers' organizations or where appropriate employers' and workers' representatives, and subsequently included in the national system of labour administration for example by delegation of certain labour administration functions to them as is permitted by Article 2 of the Convention. The best example of public administration bodies that are established and empowered by laws and regulations to perform specific tasks are labour inspection services. Other functions of the system of labour administration may in some instances involve varying degrees of private sector or social partner participation and engagement, even though ultimate responsibility rests with the government.

38. For the proper organization, effective operation and coordination of the system of labour administration as called for by Article 4 of the Convention, measures including those ensuring means of action, should be taken in addition to laws and regulations establishing and empowering public administration bodies or in some instances delegating certain functions of labour administration to non-governmental bodies.⁵

³ ILC, 78th Session, 1991, Report III (Part 4A), para. 55.

⁴ ILC, 61st Session, 1976, Report V(1), p. 5.

⁵ ILC, 71st Session, 1985, Report III (Part 4B), para. 29.

39. Public administration bodies responsible for and/or engaged in labour administration may use various means to fulfil their tasks: formulation of national policy including policy concerning international labour affairs; laws and elaboration of regulations, guidelines; publication of information and statistics on labour matters; preparation and publication of studies on labour questions; the provision of services and technical advice to employers and workers and their respective organizations; enforcement of national labour standards or legal provisions in particular through inspection and publishing the results of such inspection; making arrangements for consultation, cooperation and negotiation within the system between the public authorities and the organizations of employers and workers; and monitoring the proper functioning of delegated parastatal agencies, regional or local agencies.

III. Scope of the instruments

40. Under Article 1 of Convention No. 150 the only terms defined are "labour administration" and "system of labour administration". This Article provides the parameters of the structural and institutional arrangements and the bodies concerned with national labour policy, without giving the meaning and scope of the term "national labour policy". Indications as to what such national labour policy may include are to be found in particular in Articles 6, 7, 8 and 9 of the Convention. In this respect the Committee notes that the language of Article 6 of this Convention is general and that the list of functions enumerated in paragraph 2 is not exhaustive.⁶ Details of further aspects of national labour policy may also be found in Paragraphs 5 to 18 of Recommendation No. 158 covering the areas of labour standards, labour relations, employment and research in labour matters.

1. "Labour administration"

41. In discussing what is meant by "labour administration" the technical Committee of the Conference was reminded of some important comments of the 1973 Meeting of Experts which stated that the "concept of labour administration should be interpreted in the broadest sense" and that it "should cover all activities undertaken by public administration bodies to assist governments in the elaboration, implementation, control and evaluation of labour policy, in the service of man". It went on to state that labour administration "should cover the

⁶ An amendment to include additional subparagraphs in this Article of the Convention was made by the Government member of Canada, seconded by the Government member of Austria which was withdrawn after explanations particularly by the Government member of Australia that Article 5 already dealt adequately with the consultation, cooperation and negotiation in its various forms, while Article 6 was wide enough to embrace all aspects of national labour policy including those that were proposed by the amendment. RP (22), ILC, 64th Session, Report of the Committee on Labour Administration (para. 55).

whole system of ministerial departments and public agencies which have been set up by national laws and regulations to deal with labour matters, and the institutional framework for the coordination of their respective activities and for consultation with and participation by employers and workers and their respective organizations in the formulation and development of labour policy".⁷ It is in this context that Article 1, paragraph (a), of the Convention defines labour administration to mean public administration activities in the field of national labour policy. It was therefore clear that the concept was not to be limited to the ministries of labour or their equivalents because "the complex of activities concerned is rarely the responsibility of a single body".⁸

42. In the vast majority of countries there are ministries of labour at the centre of the system of labour administration and in most cases they carry out the bulk of the functions of the system. The various structures and institutional arrangements utilized in this respect are described in more detail in Chapter III.

2. "System of labour administration"

43. As indicated above it was clearly recognized that the role of the State was going beyond the initial and more commonly encountered practice of dealing with only the protective and enforcement aspects of labour administration. There was the awareness in the developing countries in particular that the challenges of development required a systematic coordination and a collaborative approach to labour administration to tackle important problems that arose in the labour and employment field. Continuing preoccupation regarding social justice and the beginning in the rise of unemployment in the economically advanced countries were factors that were influencing the enlargement of the fields of responsibility of bodies dealing with labour administration matters. Article 1, paragraph (b), of the Convention makes clear that the system of labour administration covers all bodies of public administration responsible and/or engaged in national labour administration or national labour policy whether they are ministerial departments, public agencies, parastatal, regional or local agencies or forms of decentralized administrations. With a view to avoiding dispersion of responsibilities and maintaining the coherence of the system, all public administration bodies engaged in labour administration and any institutional framework for the coordination of the activities of such bodies as well as those engaged with consultation involving the participation of employers and workers and their organizations, should be included in such a national system. The diversity in the various systems of labour administration and the flexibility permitted by the Convention in the organization and manner of making the system function in a coordinated way will be illustrated in Chapters II and III. Mention should none the less be made of the flexibility provided for by Article 2 of the Convention. A ratifying State may in accordance with its national laws

⁷ Report V(1), ILC, 63rd Session, 1976, pp. 18-19.

⁸ *ibid.*, p. 20.

or regulations or national practice, delegate or entrust certain activities of labour administration to non-governmental organizations, particularly employers' and workers' organizations, or when appropriate to employers' and workers' representatives.⁹ This aspect of the Convention indicates its built-in flexibility and its continuing relevance despite the continuing changes that take place in macroeconomic and social policy approaches.

3. National labour policy

44. The term national labour policy is not defined by either the Convention or the Recommendation. The real scope of a system of national labour administration is closely related to all the elements and aspects of national labour policy, which is not limited to employment policy or to social policy. Chapter II will develop the question of the functions of national labour administration. In this context it should be recalled that neither the Convention nor the Recommendation give exhaustive lists of such functions. The Convention identifies certain functions that systems of national labour administration must carry out regarding labour protection, employment, industrial relations and the provision of services and technical advice to employers and workers and their respective organizations, which provide indications as to the minimum content and meaning of the term national labour policy (Article 6). The Recommendation provides more particulars on the functional domains of labour standards, labour relations, employment and research in labour matters, which could be taken into account by member States in formulating policy (Paragraphs 5-18).

45. The Committee considers, however, that it is worth pointing out that certain aspects of national labour policy have become increasingly important in recent years, such as the protection of children at work, the promotion of equality of opportunity and treatment in employment, the training and upgrading of skills for and in the workplace in general, as well as for women and other less-favoured social groups and categories, in particular, inter alia, young people, the disabled and rural and urban self-employed persons.

⁹ In *Belgium* and *Italy* the management of social security schemes covering industrial accidents and occupational diseases as well as unemployment benefits is entrusted to workers' organizations.

CHAPTER II

Functions of the system of labour administration

General considerations

46. Article 6 of the Convention deals with the functions and main tasks of the competent bodies within the system of labour administration. Paragraph 1 of the Article covers in general terms all the functions under national labour policy which these bodies must carry out or in which they must participate.¹ Paragraph 2 sets out the main tasks devolving on these bodies; these tasks are described in paragraph 10 above. In carrying out these functions, the competent bodies within the system of labour administration must take into account relevant international labour standards as indicated in the Convention at the beginning of Article 6, paragraph 2. This does not imply, however, that the Conventions embodying these standards have to be ratified by the State ratifying Convention No. 150.² Neither does ratification of Convention No. 150 entail the undertaking by that State to apply these Conventions.

47. Article 7 of the Convention provides for the promotion of the extension of the functions of the system of labour administration, when national conditions so require, to non-wage workers and Article 8 provides for the participation of the system of labour administration in international labour affairs. The functions of the system of labour administration relate to the main fields of national labour policy, namely (in the order in which the Convention refers to them which is the order followed in this General Survey): labour protection, employment, research and labour relations. In carrying out these functions, the competent bodies within the system of labour administration shall, pursuant to Article 6, paragraph 1, of the Convention, participate as appropriate in the stages of preparation, administration, coordination, checking and review of national labour policy. These functions must be carried out in a spirit of consultation, cooperation and negotiation. Article 5, paragraph 1, of the Convention thus enshrines the principle of tripartism within the system of labour administration, a principle which is one of the fundamental objectives of the ILO and which, under paragraph 2 of the same Article, shall be guaranteed in

¹ National labour policy is not defined except for certain aspects laid down in the Convention. See paras. 44 and 45 above.

² See the Secretary-General's reply to the Government of the *United Kingdom*, ILC, 64th Session, 1978, Report IV(1), para. 47.

principle at the national, regional and local levels as well as at the level of the different sectors of economic activity, to the extent compatible with national laws, regulations and national practice.

48. Recommendation No. 158 takes up and develops in detail the principles enshrined in the Convention.³ Under its provisions, the functions of the national system of labour administration should be exercised in four areas referred to in the following order: labour standards, labour relations, employment and research in labour matters.

49. Bearing in mind that the Convention aims primarily at indicating guiding principles, the Committee will also examine functions of the system of labour administration in addition to the main functions indicated in the Convention which many national systems have already adopted, and these include occupational safety and health, social security and minimum wage fixing machinery.⁴

50. The fields of activity cited above are generally well integrated into the system of labour administration and entrusted to various bodies in most member States that have ratified the Convention or supplied a report under article 19. The importance and place given to each body, however, and hence to each aspect of national labour policy vary in accordance with the priorities and political choices of States and with the degree of development of the system of labour administration and the importance accorded to it by the government.

51. While the essential functions of the system of labour administration concerning certain specific matters have already been dealt with in other international labour Conventions (Conventions Nos. 81 and 129, 88, 122 and 142 in particular),⁵ as indicated in Chapter I, the Convention which is the subject of this General Survey makes an original contribution in regard to the obligation of States which ratify it to ensure, in accordance with national conditions, that the system of labour administration is organized and operates effectively and that the tasks and responsibilities given to it are properly coordinated in accordance with Articles 4 and 6, paragraph 1, of the Convention.

³ See above, paras. 13-20 of the Introduction.

⁴ In their conclusions at the 1973 meeting, the experts mentioned among the functions of the labour administration the organization and operation of a minimum wage fixing system, the improvement of safety and health at work, and the participation of the administration in the social security system. See ILC, 61st Session, 1976, Report V(1). In a direct request addressed in 1985 to the Government of Sweden on the application of Convention No. 150, the Committee indicated that labour administration activities included, in particular, "those covering such areas as working environment, and workers' protection, labour inspection, labour relations, conciliation, arbitration and, as appropriate, social security and questions relating to specific categories of workers".

⁵ Labour Inspection Convention, 1947 (No. 81) [and Protocol, 1995], Labour Inspection (Agriculture) Convention, 1969 (No. 129), Employment Service Convention, 1948 (No. 88), Employment Policy Convention, 1964 (No. 122), and Human Resources Development Convention, 1975 (No. 142).

52. The Committee will examine below to what extent the bodies of the labour administration system carry out these functions bearing in mind the diversity of national legislation, situations and practices.

I. Labour protection

53. Convention No. 150, Article 6, paragraph 1, lays down the responsibility of the labour administration in regard to national labour policy, specifying in particular that the competent bodies within the system of labour administration shall be the instrument for the preparation and implementation of this policy. This relates more specifically to labour standards designed for labour protection. Labour administration also endeavours to ensure such protection by other means which are not mentioned expressly in the Convention but which may be deduced from the flexible and general terms used in Article 6, paragraph 2.⁶

A. Labour standards

54. Article 6, paragraph 1, of the Convention provides that "the competent bodies within the system of labour administration shall [...] be the instrument within the ambit of public administration for the preparation and implementation of laws and regulations" which give effect to national labour policy. In carrying out these functions, various bodies of the system of labour administration are involved at many different stages, from preparation through implementation, coordination, checking and review.

55. Recommendation No. 158 refers to labour standards as the first area in which the functions of the system of labour administration should be exercised. It recommends that the competent bodies within the system of labour administration consult with the employers' and workers' organizations and enable them to participate in all stages of their preparation, application and review.

1. Preparation of labour standards

56. The preparation of draft laws and regulations of the system of labour administration constitutes the major part of the preparation of national labour policy. It is a traditional task which generally belongs to the ministry of labour.⁷ To carry out this function, in many countries it consults, often from

⁶ These relate particularly to occupational health and safety, social security, and minimum wage fixing. These questions will be dealt with below, among other aspects as well.

⁷ *Colombia*: Decree No. 14/22; *Congo*: s. 149 of the Labour Code; *Ghana*: s. 13 of Civil Service Law; *Latvia*; *Spain*: article 1 of Royal Decree No. 530/1985; *United States*: the Department of Labor is divided into several agencies. Every agency has its own responsibility; *Zaire*: s. 153 of the Labour Code.

the initial stage, with the social partners within tripartite bodies.⁸ In other countries, however, consultation occurs only once the draft law has already been prepared.⁹

57. Other bodies and institutions are also involved in the preparation of national labour standards. The ministry of labour sometimes shares with other ministries the powers of preparation of national labour standards, such as, for example, the ministries for work in mines, public health, agriculture, transport, etc. In these cases, the ministry of labour generally sees to it that consultation and cooperation with employers' and workers' organizations are effective, particularly by establishing standing committees or ad hoc mechanisms with the agreement of the social partners concerned or by organizing tripartite consultation. In addition, national labour standards may be the result sometimes of collective agreements between employers' and workers' organizations which are authorized to negotiate and conclude them. Article 3 of Convention No. 150 sets forth the principle of recourse to direct bilateral negotiations as a possible way of settling matters relating to national labour policy. According to this Article, "a Member which ratifies this Convention may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers' and workers' organizations".

58. Collective agreements are an important means of creating national labour standards. These standards may supplement legislative and regulatory texts in specific fields, it being understood that they may not lay down standards less stringent than those prescribed by law, or they may also lay down the basic

⁸ The Tripartite Meeting in *Algeria*; the Labour Council in *Antigua and Barbuda*; the National Council for Labour and Employment in *Argentina* (*Consejo Nacional del trabajo y del empleo*); the National Labour Consultative Council in *Australia*; the National Tripartite Consultation Council in *Bangladesh*; the National Labour Council in *Belgium*; the National Labour Convention in *Burkina Faso*; the National Labour Consultative Commission in *Cameroon*; *China*: as a consequence of the establishment of a socialist market economy, the labour minister consults the most important organizations at national level concerning law projects; the Higher Labour Council in *Costa Rica*; the Higher Consultative Council for Labour in *Egypt*; the National Commission for Labour Protection in *Finland*; the Consultative Labour Commission, 1980, in *Gabon*; the National Labour Advisory Board in *Ghana*; the Higher Labour Council in *Greece*; the National Council for Economy and Labour in *Italy*; the Consultative Labour Council in *Jamaica*; *Latvia*: the Tripartite Advisory Board, 1993; the Joint Negotiation Council in *Malta*; the Labour Foundation in *Netherlands*; the National Consultative Labour and Social Security Council in *Senegal*; the Consultative Labour Council in *Suriname*; the National Intersectoral Labour Council in *Venezuela*; the Tripartite Consultative Labour Council in *Zambia*.

⁹ In *Austria*, for example, the Council established by the Workers' Protection Act must give its opinion on the draft laws; *San Marino*; *New Zealand*: although *New Zealand* has not ratified Convention No. 150, the *New Zealand Council of Trade Unions* (NZCTU) complains of a real lack of consultation with regard to the 1995 review of the minimum wage legislation. They had only the opportunity to make a written submission on this matter which is not considered as "consultation" by the NZCTU in any possible construction of the term.

labour standards that the laws and regulations may complete. Although in many countries the negotiation of collective agreements lies within the competence of the social partners, public authorities intervene particularly by extending such agreements to others.

59. But the system of labour administration may intervene also to "make technical advice available to employers and workers and their respective organizations on their request" in accordance with Article 6, paragraph 2(d), of the Convention, or to provide information or explanations, or again to contribute in smoothing out difficulties which may arise during the preparation of collective agreements.

2. *Implementation of labour standards*

60. The implementation of national labour standards aims chiefly at making them effective in practice. This function entails various tasks ranging from control, in the form of administrative measures (regulations, procedures, implementation circulars), to ensuring the correct application of the standards within the enterprise.

61. Measures for applying laws and regulations on conditions of work, terms of employment and occupational safety and health remain essentially the prerogative of the ministry of labour in the vast majority of countries.¹⁰ In countries where there is a long tradition of cooperation between employers and employees, they take an active part in implementing labour standards.¹¹ In countries which are democracies with market economies, participation of employers and workers and their respective organizations in the implementation of labour standards is particularly strong, especially in regard to occupational safety and health.

3. *Coordination of preparation and application of labour standards*

62. As indicated above, coordination is provided for by Article 6, paragraph 1, of the Convention under which the competent bodies within the system of labour administration "shall, as appropriate, be responsible for [...] coordination ..." of or contribute to such coordination of national labour policy. This provision is strengthened by the terms of Article 4 which requires that "... the functions and responsibilities of [a system of labour administration] are properly coordinated".

63. The purpose of coordination is to avoid contradiction between the various standards laid down on working, living and employment conditions and to provide consistency between the laws and regulations on the one hand and implementation measures on the other. In other words, coordination aims at ensuring effective application of labour policy and implies not only consistency

¹⁰ For example *Australia, Costa Rica, Finland, Germany, Italy, Norway and Spain.*

¹¹ *Austria* (Chambers of Labour of the provinces); *Ghana; Italy; Norway; Spain* (Economic and Social Council); and *Sweden.*

in the conception of the policy but also, and especially, in its implementation. It relies on joint participation of the bodies or agents responsible for working conditions, occupational safety and health, living and employment conditions in general, and permits decision-makers to take account of interaction between the various aspects or spheres. In this regard, information and exchanges of views and documents are the necessary tools to attain such consistency.

64. In most countries, the ministry of labour is the central body responsible for coordinating labour legislation in fields falling within its direct responsibility as well as in those which lie within those of other ministries. Taking into account the diversity of fields of application, the importance and complexity of subjects and the number of participating bodies in the labour administration system involved in formulating and applying labour standards, most countries have set up institutional coordination structures — in most cases, in cooperation with the social partners¹² — and within which the ministry of labour normally has a predominant role.

4. *Checking application of labour standards*

65. Traditionally, labour inspection is one of the most important functions of labour administration. The Convention, however, deals with this function only in general terms. Nevertheless, it is important to note that the Preamble specifically recalls the terms of Conventions Nos. 81 and 129 on labour inspection.¹³ Recommendation No. 158 is more explicit; Paragraph 6 states that “the system of labour administration should include a system of labour inspection”.

66. Two traditional functions of labour inspection, more precisely dealt with in Article 3(1)(b) and (c) of Convention No. 81 and Article 6(1)(b) and (c) of Convention No. 129,¹⁴ are specifically mentioned in Convention No. 150. The first traditional function is to be found in Article 6, paragraph 2(b), under which the competent bodies within the system of labour administration must “... draw attention to defects and abuses ...” in conditions of work and working life and terms of employment, including on the situation of the unemployed and underemployed persons, and “submit proposals on means to overcome them”. The other traditional function is contained in paragraph 2(d) of the same Article which provides that the competent bodies must “make technical advice available to employers and workers and their respective organizations on their request”.

67. The Committee has prepared several General Surveys on the application of Conventions Nos. 81 and 129. The conclusions of the last General

¹² *Angola* (Consultative Employment Commission); *Austria* (public employment service); *Mexico* (National Commission on Minimum Wages); *United States*: several advisory committees, e.g. the Advisory Committee on Occupational Safety and Health.

¹³ See also Recommendations Nos. 81 and 133.

¹⁴ The traditional functions of labour inspection are particularly: to ensure application of the relevant legal provisions; to provide information and technical advice to employers and workers to this end; and to bring to the notice of the competent authority defects or abuses noted.

Survey (1985) are still essentially valid; and there is no need to repeat the description and analysis of the functions of the labour inspectorate. In view of its importance within the system of labour administration, especially in regard to application of labour laws and regulations, it is useful, nevertheless, to recall briefly some aspects of the practice of countries in this regard, on the basis of the reports supplied to the Office for this General Survey.

68. These country reports show clearly that labour inspection services are responsible in the framework of labour administration for the control of the application of the labour law, in accordance with the provisions of Conventions Nos. 81 and 129. In the vast majority of countries most of the duties of labour inspection are within the area of responsibility of the ministry of labour, with a few exceptions such as mining.¹⁵ Within the labour inspection services under the ministry of labour there may be specialized inspection services covering subject-matters such as occupational safety and health, social security.¹⁶

69. The tasks entrusted to the labour inspectorate also relate increasingly to labour relations and, particularly, to the effective application of the right to organize and collective bargaining and free exercise of the right to form freedom of association. These activities are often undertaken at the request of the social partners in countries where they are still weak or poorly organized. In such cases, the labour inspector monitors proper organization of elections to union posts and promotes social dialogue by organizing negotiations between the social partners.

70. The Committee notes that at its 82nd Session, 1995, the International Labour Conference adopted a Protocol to the Labour Inspection Convention, 1947, which concerns the extension of the application of provisions of the Convention to activities in the non-commercial services sector defined as all activities in all categories of workplaces that are not considered as industrial or commercial for the purposes of the Convention. Under Article 2, a State which ratifies the Protocol may exclude wholly or partly from its scope certain categories mentioned if application of the Convention to them would raise special problems of a substantial nature.¹⁷

5. Review of labour standards

71. Under Article 6, paragraph 1, the competent bodies within the system of labour administration "shall, as appropriate, be responsible for or contribute to [...] review" of national labour policy. The Committee considers that this concept may refer to both follow-up and examination activities as well as to assessment strictly speaking. The assessment function is one of the basic tasks of labour administration. It is a management tool which allows the effects of

¹⁵ For example, in *Belgium, Morocco, Spain* and the General Survey on labour inspection, Report III (Part 4B), ILC, 71st Session, 1985, para. 113.

¹⁶ *Argentina, Denmark, Italy, Panama, Sweden* and the General Survey, *supra*, para. 115.

¹⁷ Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81).

labour standards on labour protection, protection of workers and on the economy to be studied, as well as the review and improvement of not only legal and regulatory provisions but also of the machinery and procedures for their implementation. Furthermore, such review can provide relevant information to the bodies responsible for development and application of labour policy (the parliament, the government and the ministries).

72. The Committee notes below the limited information made available concerning the follow-up, review and assessment activities carried out within the system of labour administration, in order to examine to what extent the competent bodies carry out this review activity.

73. In many countries, the departments in the ministry of labour that are responsible for reviewing national labour standards are the same ones which prepare, carry out and follow up the standards, often in collaboration with the labour inspection services. Annual labour inspection reports provide those responsible for the follow-up and review of standards (in the ministry of labour) with important information on the application of legal and regulatory provisions on working conditions and the protection of workers in their employment. The reports of these specialist departments allow the national authorities to judge the extent of application of the national legislation and of its adaptation to new situations. In some countries, the labour inspectorate, which has extended powers of investigation, carries out occasional assessments on its initiative or at the request of the minister. Legislative authorities may also set up parliamentary commissions to carry out assessment on specific questions. In most countries, the system of labour administration submits the conclusions of such review or evaluation to the social partners by providing the evaluation report to a tripartite consultative body entrusted with the preparation and application of labour standards.

B. Other protection aspects of national labour policy

74. From the reports received it appears that, depending on the various national systems, the system of labour administration is involved in protection of labour and workers in regard also to occupational safety and health, social security and, where appropriate, minimum wage fixing¹⁸ even though these spheres are not specifically mentioned in the Convention. They are thus included in this survey.

¹⁸ See above, note 4.

1. Occupational safety and health¹⁹

75. If Convention No. 150 and the accompanying Recommendation do not specifically raise the question of occupational safety and health, this is part of the principal functions of the labour administration system. Convention No. 155,²⁰ which deals with this question and the practice of States, is a good illustration in this regard. Under the wording of Article 4 of this Convention, "every Member should, in the light of conditions and national practices and in consultation with the most representative employers' and workers' organizations, define, apply and periodically review a national coherent policy in occupational safety and health matters of both workers and the work environment".

76. Most governments involve the social partners in the preparation and development of labour standards on occupational safety and health. The ministry of labour or another governmental body may sometimes reserve the right to fix general policy on the subject.²¹ In some countries, the ministry of labour acts in cooperation with the social partners.²² In other countries, the ministry of labour alone prepares and develops labour standards on occupational safety and health and once the draft texts are ready consults employers and workers to obtain their views and comments.²³ In this respect, the Committee underlines the importance of training and prevention in the field of occupational safety and health.

77. Where collective agreements are a source of standards, the social partners contribute to the preparation and implementation of standards on

¹⁹ Occupational safety and health questions are mostly considered as independent from social security. However, in many countries, numerous overlaps exist between these two areas. This can be ascertained particularly in those countries where independent systems for occupational accidents and diseases are established, which — although part of the social security system — carry out important functions concerning occupational safety, like the establishment of protective standards, their implementation and supervision as well as sections in case of violations of these standards.

²⁰ Convention No. 155 concerns occupational safety and health of workers and the work environment, 1981. It was ratified by 27 member States at 13 December 1996.

²¹ Examples: *Germany, Tunisia and United States*. In the *United Kingdom*, those responsible for occupational safety and health came under the authority of the Ministry of the Environment in July 1995. The autonomous tripartite British Commission on Occupational Safety and Health was transferred to and made part of the Ministry of the Environment.

²² This is the case, for example, of *Costa Rica* where the Occupational Health Board is responsible for occupational hygiene and health policy. This is a tripartite body composed of representatives from the Ministry of Health, the National Insurance Institute, the Social Security Fund, and trade union centres and confederations along with employers' organizations. In *Israel*, the Occupational Health and Hygiene Institute, a tripartite body, is responsible for giving advice on this topic to the Ministry of Labour and Social Affairs.

²³ This is the case in *Austria* where a committee responsible for workers' protection gives its opinion on the laws prepared by the Ministry of Labour. In *Cyprus*, the Ministry of Labour has virtually never introduced a new law without previously obtaining the views of the social partners. Finally, in *Spain*, the Economic and Social Council, a consultative body, acts within the socio-economic and labour standards system. Its role consists particularly of providing compulsory opinions on preliminary draft laws.

occupational safety and health through direct negotiation, often at enterprise level where there are workers' committees or works councils.²⁴ On the question of monitoring their application, many countries have taken measures within the framework of their national labour inspection systems. In some cases, special inspection services have been set up. As a general rule, the scope of the inspection services covers collective agreements of whatever kind, while in some countries only collective agreements which have been extended to others are so covered.²⁵

78. In the field of occupational safety and health, the labour inspectorate is entrusted with a preventive function. This function contributes to the reduction of occupational accidents and diseases. As the Committee already emphasized in its General Survey on Convention No. 81,²⁶ prevention was considered as fundamental to inspection from the outset and this remains valid today. On this matter, the Committee refers to its General Survey of 1985 on labour inspection. However, supervision of occupational safety and health matters is sometimes the responsibility of inspectors other than labour inspectors.²⁷

79. Concerning safety and health at work, and along the lines of the requirements of Article 13 of Convention No. 81 on labour inspection and Article 18 of Convention No. 129 on labour inspection in agriculture, labour inspectors are often empowered to order remedial action to be taken and when necessary to require measures with immediate executory force in the event of imminent danger to health and safety of workers.

2. Social security

80. Social security requires some involvement by competent labour administration bodies. This varies considerably in accordance with the social security system in force and the extent to which the State is concerned in its establishment, finance and functioning.²⁸ Generally, social security involves various government institutions (ministries of social security, labour, health, finance, etc.), employers' and workers' organizations, insurance institutions²⁹

²⁴ In *Finland*, for example, collective agreements which may regulate labour relations and employment conditions contain agreements on special matters included in various fields including occupational health and safety.

²⁵ See the General Survey on labour inspection, Report III (Part 4B), ILC, 71st Session, Geneva, 1985, and Articles 27 of Convention No. 81 and 2 of Convention No. 129.

²⁶ *ibid.*, paras. 82-97.

²⁷ In the *Czech Republic*, for example, supervision and inspection of safety of selected technical equipment is delegated to selected and approved semi-governmental and non-governmental institutions.

²⁸ See *Developments and trends in social security throughout the world, 1993-1995. Social security in the 90s: The imperatives of change*. Report I, 25th General Assembly, International Social Security Association, Geneva.

²⁹ These institutions are managed by tripartite boards; *Algeria, Canada, Italy, Spain, Tunisia*.

and others. Whatever the system, there are departments in charge of social security matters within the competent bodies of the labour administration system. The extent of their involvement depends on the system in force and may vary from contribution to developing the pertinent national policy and legislation to overseeing and monitoring their operation with the participation of employers and workers and their respective organizations in the context of tripartite boards.³⁰

81. Examination of national practice shows that in many countries the ministry of labour is totally or partly responsible for social security and, in particular, for the preparation and application of the legislation concerning it. Sometimes it also takes direct responsibility for managing social security funds. This is the case for countries which have a social security code providing national legislation on the subject and laying down the scope of legislation, conditions of entitlement and nature, form and rate of benefits provided for by social security branches, namely: sickness, retirement and pensions, occupational accidents and diseases and unemployment, in addition to the various family benefits.

82. In many countries, various tripartite or joint bodies are responsible for managing social security funds or paying benefits. These autonomous bodies are generally headed by a governing board with an elected chairman provided by the social partners. Finally, in other countries, various bodies administer social insurance schemes in accordance with the risk covered.³¹

83. The Committee had earlier noted that the principal concern in recent years covering social security was management and rationalization. It noted that countries have been seeking solutions with new forms of social security system management, particularly privatization, which raise serious problems. It reiterates the view that the interests of the people protected, especially the level of social protection, should be taken fully into consideration and that the representatives of those protected continue to be involved as far as possible in the reform process.³²

3. Minimum wage fixing machinery

84. The International Labour Conference has adopted several instruments concerning minimum wage fixing. They are: Convention No. 26 and Recommendation No. 30 on minimum wage fixing machinery (1928), Convention No. 99 and Recommendation No. 89 on minimum wage fixing in

³⁰ See paras. 139-147, 338-346 of the MELA report, a Working Paper for a Meeting of Experts on Labour Administration (MELA/1973/1). See also ILC, 76th Session, 1989, Report III (Part 4B), *Social Security Protection in Old-Age*, para. 207, and the practice, for example in Mexico.

³¹ Chile in the area of old-age insurance; Argentina, Colombia.

³² ILC, 83rd Session, 1996, Report III (Part 4A), paras. 58 and 59.

agriculture (1951), and Convention No. 131 and Recommendation No. 135 on minimum wage fixing (1970).³¹

85. The conclusions of the 1973 experts' meeting on labour administration indicate that in this field the labour administration system should have the function so far as is compatible with the provisions established by national laws, regulations and practice, to organize and operate a system of fixing minimum wages, taking into account the relevant international labour standards, notably those concerning the primary importance of collective agreements.³⁴

86. In its 1992 General Survey, the Committee examined the machinery for fixing, applying and controlling minimum wages in the various member countries. More specifically, this relates to the procedure or practical methods used by States to fix minimum wages or to recognize as minimum wages those fixed in some other way, particularly by collective bargaining. Among minimum wage fixing machinery, the Committee identified statutes, the decision of a previously constituted agency (wages boards, councils or committees, court decisions) as well as the collective agreements which have been given the force of law.³⁵ For more information, the Committee refers to its 1992 General Survey.

II. Employment and human resources development

87. Convention No. 150 takes employment policy as one of the essential functions of the system of labour administration. Although the Convention does not contain provisions on human resources development, this question is part of employment policy as is shown by the practice of countries which supplied a report. Recommendation No. 158 confirms this by linking occupational guidance and vocational training policies to employment policy. The same is true of Convention No. 142 which provides that a close link must be established between employment services and human resources development. For further details, the Committee refers to its recent General Survey on the subject.³⁶

³¹ By 13 December 1996, Convention No. 26 had been ratified by 100 Members including 27 member States which have also ratified Convention No. 150. Convention No. 99 had been ratified by 52 member States, including 15 which have also ratified Convention No. 150. Convention No. 131 had been ratified by 40 member States, including 13 which have also ratified Convention No. 150.

³⁴ See para. 7(e) of Report V(1), ILC, 61st Session, 1976, pp. 7 and 30-32.

³⁵ ILC, 79th Session, 1992, Report III (Part 4B), *Minimum wages*, paras. 43-55.

³⁶ *Human resources development: Vocational guidance and training, paid education leave*, ILC, 78th Session, 1991, Report III (Part 4B).

A. Employment

88. Convention No. 150, Article 6, paragraph 2, provides that the competent bodies within the system of labour administration, "taking into account international labour standards, shall participate in the preparation, administration, coordination, checking and review of national employment policy". The Convention however does not define the concept of national employment policy. Convention No. 122 and Recommendation No. 122 concerning employment policy, 1964, as well as Recommendation No. 169 concerning employment policy (supplementary provisions), 1984, give useful indications in this regard.

89. Article 1 of Convention No. 122 provides that: "With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment". Article 1, paragraph 2(c), of the same Convention requires such policy to ensure non-discrimination. Recommendations Nos. 122 and 169 set out in more detail the policies and measures for promoting employment, the pursuit of employment objectives in fields such as demographic policy, employment of certain young people, certain women, and disadvantaged groups and persons, technology policies, the informal sector, small undertakings, international economic cooperation and international migration. Concerted action in all these spheres exceeds the competence of the ministry of labour alone and requires cooperation from various ministerial institutions and bodies.

90. As the Committee has often emphasized, the objectives of the Employment Policy Convention, 1964 (No. 122) should be pursued within "the framework of a coordinated economic and social policy" in accordance with Article 2(a), of the Convention. It also recalled the importance attached to "giving full effect to the provisions of the Convention providing for consultation with representatives of employers and workers, as well as other sectors of the active population, such as persons employed in the rural and informal sectors".³⁷

91. The reports received by the Office show that almost all countries have given their system of labour administration a fundamental role in formulating and implementing national employment policy. The liberalization of international trade and globalization of the economy have caused many problems in the organization and regulation of the labour market.³⁸ New requirements in human resources management, especially new forms of employment resulting from rapid technological and organizational developments have also had an effect on unemployment levels which remain high. Considering these challenges, the

³⁷ See Report III (Part 4A), ILC, 81st Session, Geneva, 1994, para. 93.

³⁸ See also *Employment policies in a global context*, Report V, ILC, 83rd Session, 1996; and *World Employment 1996/97* "National policies in a global context", ILO, 1996.

Committee notes with interest that the World Summit for Social Development (Copenhagen, 1995) emphasized that only a tripartite approach would be likely to achieve full employment, an objective which all governments are committed to achieving.³⁹

1. Preparation of national employment policy

92. The 1972 General Survey⁴⁰ on Convention and Recommendation No. 122 on employment policy, 1964, already highlighted the very great diversity of methods used to decide on measures for promoting employment as well as on the diversity of approaches in the action programmes, the variety of measures and the very different machinery used in their implementation.

93. According to information available to the Committee, some countries, considering that the ministry responsible for labour matters is the authority which should have general responsibility for decisions concerning national employment policy and thus entrust the preparation and development of such policy to the ministry of labour. Other countries separate labour matters from employment matters by entrusting preparation and development of national employment policy to another ministry specifically charged with employment and vocational training.⁴¹ In other countries, this function is shared among several ministries, including the ministry of labour. Finally, in some countries, the ministry of labour shares this function not only with other ministries but also with decentralized public authorities at the level of federated units or provinces.⁴²

94. In many countries, a large part of preparation and development of national labour policy falls within the competence of higher national bodies of the economic and social council type,⁴³ in which the ministry of labour, other ministries and several public authorities are represented as well as, in most cases, the most representative organizations of employers and workers.⁴⁴ These

³⁹ Report of the World Summit for Social Development, United Nations, Copenhagen, Denmark, 6-12 March 1995.

⁴⁰ ILC, 57th Session, 1972, Report III (Part 4B).

⁴¹ For example *Australia, Congo, Gabon, Ghana, Kuwait, Thailand, Tunisia and United Kingdom*.

⁴² This is the case in particular for certain federal States such as *Australia, Belgium, Germany, and New Zealand*.

⁴³ *Algeria* (Economic and Social Council), *Belgium* (Central Council for the Economy and Economic and Social Council in each region), *Colombia* (National Council for Economic and Social Policy), *Greece* (Economic Commission of the Government), *Italy* (National Economic and Labour Council), *Lebanon* (Economic and Social Council), *Portugal* (Economic and Social Council), *Spain* (Economic and Social Council), *Tunisia* (Economic and Social Council).

⁴⁴ For example, the Economic Planning Advisory Council in *Australia*, the National Planning Council in *Jamaica*, the Tripartite Advisory Board in *Latvia* or the National Council for Economic Development in *Mauritius*. In *Mexico*, the Alliance for Economic Recovery is presided by the Minister.

bodies prepare and present to the government the strategy and general directions of the national employment policy and the programmes to be carried out. In many cases, the government leaves it to national, regional or sometimes local tripartite bodies,⁴⁵ or to decentralized public authorities, to specify and decide on, or to supplement, the special measures and programmes to promote employment in accordance with the specific needs of a region or a sector of economic activity.

95. Several countries also have sectoral tripartite bodies, specifically responsible for employment and labour markets, which participate in the preparation and development of the national employment policy. These bodies generally participate in defining specifically national labour policy, within the framework established by the law.⁴⁶ As Chapter III shows, recourse to these tripartite consultation bodies is very extensive.⁴⁷

2. Administration of national employment policy

96. As a general rule, the ministry of labour has overall responsibility for applying the national employment policy.⁴⁸ But in some countries, this function is shared with other ministerial bodies⁴⁹ and with the decentralized public

⁴⁵ In *Germany*, for example, the Federal Ministry of Labour and Social Affairs and the Labour Ministries of the *Länder* exercise general control but preparation and application of the national labour policy fall essentially to the Federal Office of Labour.

⁴⁶ In *Denmark*, a National Labour Market Council (*Landsarbejdradet*) advises the Labour Minister and the Under-Secretary of State for Unemployment Insurance, identifies strategic aims, target groups and quantitative performance indicators for regional and local employment offices. In *Finland*, the Ministry of Labour is advised on labour market policy by the Council for Labour Affairs. In *Italy*, these tripartite structures are very developed. cf. *The public labour service in Denmark, Finland and Italy*, OECD, 1996, p. 45.

⁴⁷ See Ch. III.

⁴⁸ In *Denmark*, labour policy is implemented by the National Labour Market Authority (AMS) and the Unemployment Insurance Directorate; municipalities may also undertake activities in this field. In *Finland*, the Ministry of Labour administers the employment service at regional and local level; certain departments in this Ministry administer more specifically the international employment service, the business advisory board for choice of localization, the remuneration guarantee for employees of undertakings subject to bankruptcy procedure, and the National Labour Institute, which is a training centre of the Ministry. In *Italy*, it is the Ministry of Labour which manages the employment service offices at various territorial levels. The SPE has 19 regional offices, 85 provincial offices and over 500 local offices (SCI). The local offices are the chief agencies for employment placement and receive instructions from the provincial offices which control collective dismissal procedures. The regional offices coordinate the activities of the provincial offices, receive and examine applications for unemployment insurance registration and keep a register of "mobile" unemployed.

⁴⁹ In *Denmark*, the labour policy also involves the Ministry of Education (the technical schools under its aegis provide training courses to qualified and unqualified workers) and the Ministry of Social Affairs (which controls social welfare with the exception of unemployment insurance).

authorities.⁹⁰ Moreover, in order to achieve the objectives set by the various employment promotion programmes, many countries have created and established either a general directorate or a specialized department within the ministry of labour, or special parastatal bodies as suggested in Paragraph 13 of Recommendation No. 158. These bodies may administer unemployment benefits, jobseeking and placement, vocational information and guidance, encouragement for vocational and geographical mobility, information on the labour market, vocational guidance courses, advice to firms, occupational retraining activities, management of special programmes for the maintenance and for the creation of jobs, promotion of independent employment, management of migratory movements, as well as the application of various active labour market measures to promote employment such as the special measures in favour of employment for young people or special categories of workers. Recommendation No. 158 provides indication along these lines in its Paragraph 16.

97. The majority of national labour administration systems include a free public employment service which fulfils all or some of these functions. In some countries, the public employment service is an eminently technical body used as an operational instrument for national employment policy. The public employment service may be centralized and, in this case, it comes directly under the competent ministry through its external structures; it may also be autonomous and take the form of a public body or institution under the aegis of the ministry responsible for employment matters; finally, it may be completely decentralized and come under the decentralized public authorities.

98. The public employment service may often administer the unemployment benefits schemes. Nevertheless, in a number of countries, a different body is responsible for administering unemployment benefits or the establishment of training centres and subsidized internships for the unemployed. In such cases, the employment services are required to coordinate their activities with these bodies. When the labour administration system is decentralized, application of the national employment policy may come under the responsibility of regional administrations or even municipalities.

3. *Coordination of national employment policy*

99. Under Article 6, paragraph 2(a), the competent bodies within the system of labour administration shall participate in the coordination of national employment policy. The Convention does not give any details concerning this function. However, the Recommendation does give more information by providing for the coordination at the central level and at the different levels of the competent bodies within the system of labour administration. First, at the central level, the Recommendation stipulates that the coordination of labour administration activities should be achieved by encouraging the competent central

⁹⁰ Examples: Argentina, Australia, Belgium, Canada, Spain, Switzerland, United States.

body to take or be closely associated with institutional measures for this purpose.⁵¹ At the level of the different bodies, it then makes provision for coordination by the competent bodies, or their participation in the coordination of employment services, in programmes for the creation and promotion of employment, vocational guidance and vocational training programmes and unemployment benefit schemes as well as the coordination or participation in coordination of the latter with the implementation of general employment policy measures.⁵²

100. Coordination in national employment policy is also required by Convention No. 122 which specifically deals with this matter. Under Article 2, paragraph (a), each Member shall, by such methods and to such extent as may be appropriate under national conditions, "decide on and keep under review, within the framework of a coordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1". It is precisely on the subject of coordination that the Committee of Experts had recalled that the objectives of the Convention should be pursued within "the framework of a coordinated economic and social policy".⁵³

101. Since national employment policy must be integrated in the framework of a coordinated economic and social policy, coordination is provided either by a national body or by an interministerial commission responsible for the various components of the national policy on this question. This coordination is generally carried out by tripartite bodies set up by national legislation for this purpose. In certain countries, the employment service provides the essential part of this coordination, especially in regard to regional and local offices as well as the decentralized public authorities, under the overall responsibility of the ministry concerned.⁵⁴

⁵¹ Under Paragraph 11(2) of Recommendation No. 158: "A central body of the system of labour administration, to be determined in accordance with national laws or recommendations, or national practice, should be closely associated with, or responsible for taking, appropriate institutional measures to coordinate the activities of the various authorities and bodies which are concerned with particular aspects of employment policy."

⁵² Under Paragraph 12 of Recommendation No. 158: "The competent bodies within the system of labour administration should coordinate, or participate in the coordination of, employment services, employment promotion and creation programmes, vocational guidance and vocational training programmes and unemployment benefit schemes, and they should coordinate, or participate in the coordination of, these various services, programmes and schemes with the implementation of general employment policy measures."

⁵³ See ILC, 81st Session, 1994, Report III (Part 4A), para. 93.

⁵⁴ In *Cyprus*, for example, informal links between the Ministry of Labour and other departments such as the planning office of the public administration or the personnel department and the Ministry of Education are provided by interdepartmental committees. Conversely, formal coordination channels are provided by the Council of Ministers. In the *Czech Republic*, the employment services set up consultative bodies consisting of representatives of employers' and workers' organizations, cooperatives and organizations of disabled persons, etc. The purpose of these bodies is to coordinate application of the national employment policy in the regions concerned, to collect information and to request opinions on the questions and various forms of active labour policies.

4. Review of national employment policy

102. In a field as vast and complex as national employment policy and programmes adopted and implemented to promote employment creation and combat unemployment and underemployment, which should take into account the promotion of equality of opportunity and treatment in employment for women and other less-favoured groups and categories, the review function of the system of labour administration is an essential one. It is a management tool which makes it possible to explain successes or failures in achieving the objectives set by national employment policy and employment promotion programmes and studying the effects of employment policy measures at the global level. Furthermore, as in the labour policy sphere, review exercises provide useful information to the decision-making bodies responsible for formulating and implementing national employment policy.⁵⁵

103. National employment policy objectives and programmes set up to promote job creation lend themselves to review since quantitative objectives are most often fixed by political decision-makers and administrators of employment promotion programmes. In this respect, the need to review achievement of objectives with the aim of providing an effective public service is more important than ever for decision-makers and administrators within the labour administration system. In fact, in recent years having been confronted by budgetary difficulties and a steep increase in unemployment and underemployment, they have been attempting to provide effective management of employment promotion measures, which require large budgets.

104. It is difficult to assess the extent to which this review function is carried out in member States, but information regarding countries which belong to the European Union indicates that a review system for national employment

⁵⁵ *Australia* has a complete and strict system of follow-up programmes. The Federal Ministry of Employment, Education and Training manages an extensive automatic information processing system (Programme Administration and Statistical System) which has information on every internship offered in the context of programmes (administrative information, type of participants and information on the internship) (source: *Evaluation of programmes for employment and social measures*, OECD, 1991, pp. 161-166). In *Canada*, a department (Employment and Immigration Canada — EIC) was created in 1966 to evaluate the programmes of the manpower and employment services; the 1983 policy provides for all programmes to be evaluated every five years and new programmes or recently changed ones to be evaluated every two years. Since 1977 when the Council of the Treasury imposed systematic and periodic evaluation, more than 90 studies have been done or ordered by the employment and immigration programme evaluation service of Canada; most (some 50) concern employment creation and employment services, 16 concern programmes for human resources development, 13 concern unemployment insurance and 11 concern immigration (*ibid.*, pp. 57-58). In *Cape Verde*, for example, there is an employment and vocational training institute, a tripartite consultative body, under the supervision of the Ministry of Labour, Youth and Social Progress which is responsible for determining, assessing and applying the employment and vocational training policy, strategies and programmes. In *Germany*, the evaluation of programmes for employment go back to 1969, when the Employment Promotion Act (AFG) entrusted the Research Institute on the Labour Market and the Professions (IAB) to assess their degree of effectiveness (*ibid.*, pp. 103-121).

policy has become an essential feature in carrying out their programmes.⁵⁶ The system consists of "regularly conducted observation of statistical indicators of LMP input/output and performance (outcome) for the purpose of improving programme implementation (and sometimes programme design)".⁵⁷

105. In these countries, the competent bodies which follow up national labour policy are chiefly the ministry of labour or ministry of employment in collaboration with its affiliated structures, namely the bodies under the competent ministry. In other countries, review activities on national employment policy programmes are carried out by independent research and evaluation organizations subcontracted by the Employment Service Research Programme.⁵⁸

B. Vocational training and guidance

106. This aspect of labour administration is not covered expressly by the Convention which does not impose a particular obligation on ratifying States in this respect. Nevertheless, it should be examined, bearing in mind the increasing similarity of practice in countries which have assigned this task to the labour administration system and taking into account also the indications given in Paragraph 17 of Recommendation No. 158 under which the competent bodies within the system of labour administration "should, in a manner and under conditions determined by national laws or regulations, or national practice, participate in the development of comprehensive and concerted policies and programmes of human resources development, including vocational guidance and vocational training". The relationship between employment and human resources development is emphasized in Paragraph 12 of the Recommendation which requires coordination or participation in coordination between "employment services, employment promotion and creation programmes, vocational guidance and vocational training programmes ...". Convention No. 142, Article 1, paragraph 1, requires the development of "comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services". The Committee has underlined this relationship in its General Survey, noting that "the public employment services are clearly an ideal vantage point from which to monitor the harmonization of vocational training and employment".⁵⁹

⁵⁶ Peter Auer: "Monitoring of labour market policy in EU Member States", in *Employment Observatory Policies*, Focus, inforMISEP, No. 53, Spring 1996, p. 27.

⁵⁷ *ibid.*

⁵⁸ In the *United Kingdom*, for example, the Employment Service Research Programme draws up the list of topics for research and evaluation projects which are contracted out to independent research organizations, academics and consultancies following competitive tendering. The Department for Education and Employment research programme functions in the same way. The *Employment Gazette* of the Department of Employment and Education.

⁵⁹ *Human resources development: Vocational guidance and training, paid educational leave*, ILC, 78th Session, 1991, Report III (Part 4B).

107. The key role played by human resources development in social progress is widely recognized by all countries. Countries give this field of activity an important place in their system of labour administration, recognizing that training, offered without any discrimination, plays a large part in national employment policy. While several member States have a ministry of employment and vocational training, the great majority include these activities in the ministry of labour or the ministry of labour and employment.

108. In its 1991 General Survey, the Committee noted the complexity of the actual area covered by the overall concept of human resources development as well as the large number of authorities responsible for it.⁶⁰ The Committee noted that "the improvement of information on the supply as well as the demand for vocational training at all levels was considered to be a field where concerted action by all interested parties was of vital importance for the development of balanced and efficient vocational training approaches".⁶¹ In many countries, public employment services play a decisive role in vocational guidance. In a number of countries, vocational guidance is carried out by specialized services. In such cases coordination between these services is obviously of prime importance.

109. According to available information in a good number of developing countries, structural adjustments programmes and the disengagement of the State from the economy have resulted in a reduction of possibilities or outlets in the public sector. Furthermore, there is an increasing need to manage uncertainty in the economic context which is characterized by rapid changes in the situation, accelerated technological development and the requirements of competition. The Committee notes that the ILO is concentrating on improving information about the labour market and providing sustained assistance to countries which do not have specialized services on the subject or which wish to strengthen existing services, particularly through improvement of training for the officials concerned.

III. Study, research and statistics

110. Under Article 6, paragraph 2(b), of the Convention the competent bodies within the system of labour administration shall "study and keep under review the situation of employed, unemployed and underemployed persons, taking into account national laws and regulations and national practice concerning conditions of work and working life and terms of employment, draw attention to the defects and abuses in such conditions and terms and submit proposals on means to overcome them". This monitoring requires not only the

⁶⁰ *ibid.*

⁶¹ *ibid.*, para. 95.

study of people's situation in regard to their conditions of work⁶² and working life and terms of employment but, in a general way, carrying out research with a view to adapting national labour policy to the situation as it evolves. Paragraph 18 of Recommendation No. 158 stresses this aspect by affirming that "for the fulfilment of its social objectives, the system of labour administration should carry out research as one of its important functions and encourage research by others".

111. As a general rule, the ministries of labour and other ministries which share with it certain responsibilities for labour and employment have a department or associated structures which study conditions of work and employment. The information they receive comes essentially from labour inspection services, labour relations services and employment services or social security institutions. Large ministries of labour often have their own study and research departments which work in liaison with universities or research institutes in particular.

112. Some countries resort to ad hoc bodies responsible for collecting and distributing information, coordinating research and carrying out consultative functions in regard to improving working conditions, workers' physical environment, organization of work, study methods and assessment of working conditions. Standing bodies responsible for studying and carrying out research on certain aspects of working conditions, especially occupational safety and health, are sometimes included in the labour administration system. Sometimes non-governmental organizations subject labour standards to regular critical examination and submit reports to their annual conferences and to the government.⁶³

113. The objective sought by studies and research cannot be achieved without statistical data. Even if Convention No. 150 says nothing about statistics, the latter are in practice a major source of information on conditions of work and employment in most member States.⁶⁴ For its part Recommendation No. 158 contains a provision in Paragraph 20(2) to the effect that the information or reports which each of the principal labour administration services should provide to the ministry of labour or another comparable body should "include appropriate statistics [...] in such a manner as to permit an evaluation of present

⁶² This is the case for example of child labour which has been the subject of much research in particular since the International Programme for the Elimination of Child Labour (IPEC). The Committee notes with interest that the ILC will examine at its 86th Session the question of child labour with a view to adopting instruments for the elimination of the worst forms of child exploitation: prevent child labour in hazardous work and to remove children without delay from prostitution, pornography and other extreme forms of exploitation.

⁶³ This is the case, for example, of women's groups which, in a number of countries, aim to modify provisions discriminating against women.

⁶⁴ The establishment of labour offices, i.e. central survey and statistics offices whose work paves the way for legislative action, is the first stage in the development of labour administration. See ILO: "Labour administration: Origins and development", Michel Wallin, in *International Labour Review*, Vol. 100, No. 1, July 1969, pp. 51-110.

trends and foreseeable future developments in areas of major concern to the system of labour administration". There is furthermore a Convention which deals more specifically with this question. This is the Labour Statistics Convention, 1985 (No. 160),⁶⁵ Article 1 of which prescribes that each Member which ratifies it undertakes that it will "regularly collect, compile and publish basic labour statistics" which shall be progressively expanded to certain subjects listed in the Convention, including the active population, employment, unemployment, underemployment, occupational injuries, occupational diseases, and industrial disputes.

IV. Labour relations

114. Convention No. 150 contains provisions on industrial relations which are supplemented in more detail by Recommendation No. 158. The role played by labour administration in this area, with full respect for the autonomy of employers' and workers' organizations, promotes tripartite cooperation. The functions of the competent bodies of the labour administration system within this context consist of various tasks and responsibilities that promote dialogue between the social partners.

1. *Provisions of the Convention and of the Recommendation*

115. Convention No. 150 lays down the role to be played by the competent bodies in the area of labour relations by stating that they shall, on the one hand, "make their services available to employers and workers, and their respective organizations ... with a view to the promotion — at national, regional and local levels as well as at the level of the different sectors of economic activity — of effective consultation and cooperation between public authorities and bodies and employers' and workers' organizations, as well as between such organizations" (Article 6, paragraph 2(c)) and, on the other, "make technical advice available to employers and workers and their respective organizations on their request" (Article 6, paragraph 2(d)).

116. The Recommendation refers to labour relations as the second area in which the functions of the system of labour administration should be exercised. The part devoted to this area concerns essentially the encouragement of harmonious labour relations. The instrument lists the various means to achieve this goal, namely the free exercise of the right to association, the right to organize and bargain collectively, official consultation services, voluntary negotiation machinery, the existence of consultation and mediation bodies within the system of labour administration.

⁶⁵ Convention No. 160 is a revision of the Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63).

117. Such functions of labour administration can be performed effectively only in close cooperation with employers' and workers' organizations. Accordingly, the Convention provides, in Article 5, for the active participation of employers and workers. Article 5(1) stipulates that every State ratifying the Convention "... shall make arrangements ... to secure, within the system of labour administration, consultation, cooperation and negotiation between the public authorities and the most representative organizations of employers and workers, or — where appropriate, employers' and workers' representatives". Article 5(2) provides that "to the extent compatible with national laws and regulations, and national practice, such arrangements shall be made at the national, regional and local levels as well as at the level of the different sectors of economic activity".

118. The Office had the opportunity to provide clarification in its reply to the government of a member State which had requested an opinion on the interpretation of Article 5 concerning precisely the question of consultation, cooperation and negotiation between public authorities and the most representative employers' and workers' organizations or, where applicable, employers' and workers' representatives. The specific question was whether the requirement of "negotiation" in this Article should be interpreted to mean a process whereby changes may result from consultation, or a process leading to a binding instrument between the State and one of the social partners.⁶⁶

119. The preparatory work of the Committee on Labour Administration had led to a consensus on the statement by one government which can be seen as expressing a general agreement on the scope of Article 5 of the Convention, namely that "it would be left to each country to decide in accordance with national practice what should be the subject, the level and the form" of the consultation, cooperation or negotiation. Furthermore, Article 5 prescribes only "arrangements appropriate to national conditions".⁶⁷ As regards the specific question of "negotiation", it should be emphasized that the negotiation process to which reference is made in Article 5 of the Convention does not necessarily imply "a process leading to a binding arrangement between the State and one of the social partners".⁶⁸

⁶⁶ See ILO Memoranda prepared by the International Labour Office in reply to requests for clarification concerning instruments adopted by the International Labour Conference, GB.238/22/5, 238th Session, Geneva, 16-20 Nov. 1987.

⁶⁷ Statement by the Government of Japan, ILC, 64th Session, *Record of Proceedings*, p. 22/6.

⁶⁸ Memoranda, op. cit. It should be recalled that in the usage of the Committee on Freedom of Association of the Governing Body recourse to this concept, or similar concepts, have been made in contexts emphasizing the principle that parties have "the obligation to negotiate in good faith for the maintenance of the harmonious developments of labour relations" or that they "should negotiate in good faith and make efforts to reach an agreement" (Freedom of Association, *Digest of decisions and principles of the Freedom of Association Committee*, 4th (revised) edition, ILO, Geneva, 1996, paras. 814-817). The good faith of the parties and their readiness to negotiate towards a mutually satisfactory agreement seems to be inherent to the concept of "negotiation"

120. The Convention also recognizes the principle and the possibility of recourse to direct collective negotiation between employers' and workers' organizations: according to Article 3, a State which ratifies the Convention "may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers' and workers' organizations".⁶⁹

121. The labour administration system plays a particularly important role in labour relations: in particular it prepares legislation to protect the right to organize and collective bargaining and the free exercise of the right of association, it ensures that such legislation is effectively applied and it sets up institutional structures to ensure that employers, workers and their respective organizations are consulted on and involved in all activities related to the national labour policy.

2. Tripartite cooperation

122. It should be recalled that the Preamble to Convention No. 150 recognizes that employers' and workers' organizations have "essential roles in attaining the objectives of economic, social and cultural progress". The Committee notes that the International Labour Conference has just examined in detail a report on "Tripartite consultation at the national level on economic and social policy" submitted to it at its 83rd Session (1996). The report presents and analyses recent developments in tripartite cooperation. The Committee has noted with interest the statement in the report that "the considerable expansion of democracy and the market economy that has recently occurred in several countries has fostered tripartite cooperation", although the "economic, technological and social transformations (the exacerbation of economic difficulties, the globalization of the economy, increased flexibility of production and the diversification of the labour market)" and the fact that "parallel to these changes, market forces were gradually allowed to play a greater role than was previously the case, ... did make tripartite cooperation more difficult and demanded certain adjustments".⁷⁰

123. Tripartite cooperation necessarily implies healthy and constructive labour relations, which require respect for the autonomy of employers' and workers' organizations as the preamble to Convention No. 150 recognizes, recalling "the terms of existing international labour Conventions and Recommendations guaranteeing rights of association, organization and collective bargaining". Recommendation No. 158 (Paragraph 7) encourages the competent bodies within the system of labour administration to "participate in the determination and application of such measures as may be necessary to ensure the free exercise of employers' and workers' right of association". In its General

⁶⁹ See paras. 57-58 above.

⁷⁰ ILC, 83rd Session, 1996, Report VI, p. 13.

Survey of 1994⁷¹ on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Committee examined the relevant national legislation and practice in detail. Suffice it to say here that, in addition to the constitutional guarantees that exist in some countries of the free exercise of the rights of association, organization and collective bargaining, in most countries there are legislative or administrative provisions or arrangements guaranteeing the exercise of these rights.

124. As for the enforcement of labour relations legislation, nearly all countries have permanent machinery in place, often supplemented by arrangements of a less formal nature. In many countries, such machinery is constituted by a central body for tripartite cooperation,⁷² which has the authority to examine and give opinions on matters raised by either of the social partners. These tripartite cooperation bodies are described in Chapter III.

3. Other promotional functions

125. In view of the importance of labour relations, some labour ministries have special departments, in addition to the labour inspectorate, for the enforcement of the relevant laws and regulations. These departments provide advice and assistance to employers' and workers' organizations on request.

126. With regard to collective bargaining, the competent bodies within the system of labour administration are increasingly called on to provide advice and promote social dialogue between employers and workers at the enterprise level and sometimes at the level of a sector of economic activity or a region. The social partners frequently ask the labour inspectorate to participate in joint committees.⁷³ When collective agreements are being negotiated,⁷⁴ for example, the labour inspectorate may participate in a number of ways: in some countries it chairs the joint committee during negotiations,⁷⁵ in others, it participates only where the collective agreement is likely to be extended to others; and elsewhere it intervenes only to help break a deadlock in the negotiations.

127. Article 6, paragraph 2(c) calls for certain services to be made available to employers and workers for effective consultations and cooperation between public authorities and bodies and employers' and workers' organizations, as well as between such organizations. Paragraph 10 of Recommendation No. 158 spells out the function of systems of labour administration in the provision of conciliation and mediation facilities in cases

⁷¹ See *Freedom of association and collective bargaining*, ILC, 81st Session, Geneva, 1994, Report III (Part 4B).

⁷² For example, the National Labour Relations Board of the *United States*.

⁷³ In *Tunisia*, for example.

⁷⁴ See paras. 56-57 above.

⁷⁵ For example: *Algeria, Tunisia*.

of collective disputes. In addition, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) calls for conciliation procedures to be free of charge, expeditious and set in motion on the initiative of any of the parties to the dispute (or ex officio by the conciliation body).⁷⁶ Special departments of the labour ministry provide advice and assistance to employers' and workers' organizations. Moreover, in many countries, as well as helping to prevent disputes, an intrinsic part of its role, the labour inspectorate is called upon to act as conciliator in individual labour conflicts, because of its practical knowledge of the work environment.⁷⁷

V. Extension of the functions of labour administration

128. Convention No. 150 provides for the extension of the scope of labour administration activities to certain categories of workers who are not, in law, employed persons. Article 7 stipulates: "When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in cooperation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons ...". Article 7 also lists the main categories of workers to be covered by this provision: "(a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers; (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice; (c) members of cooperatives and worker-managed undertakings; (d) persons working under systems established by communal customs or traditions".⁷⁸ Conventions and Recommendations have laid down rules and principles to govern the conditions of work and working life of these categories of workers.

129. The Committee draws attention to the flexibility of this provision: a State which has ratified the Convention should promote such extension only when national conditions so require and, additionally, in so far as such activities are not already so covered. Furthermore, it imposes an obligation as to the means, rather than the end result: the State is to *promote* the extension of labour administration activities to cover workers who are not employed persons,

⁷⁶ See also para. 192 *infra*.

⁷⁷ *Madagascar*, for example. These additional tasks should however not interfere with the discharge of the primary duties of labour inspection nor prejudice the authority or impartiality of labour inspectors.

⁷⁸ Some countries have evoked the situation of homeworkers in their reports in the context of Article 7, e.g. *Japan* and *Malta*. The Committee notes that the Home Work Convention, 1996 (No. 177), has been adopted by the Conference at its 83rd Session.

particularly in the categories referred to. Nor need the extension be immediate; it may, if necessary, be by gradual stages. In any event, the Convention does not require to have legislation which applies to the categories of workers mentioned in Article 7 as a condition for ratification.⁷⁹

130. The question of extending labour administration activities to workers who are not employed persons has become increasingly important in many countries in the last few decades.⁸⁰ It has become very important for many developing countries owing to the chronic poverty of some categories of workers and to underemployment and unemployment. A certain number of international instruments adopted in the ILO lay down rules and principles concerning them. The informal sector has become increasingly important and concerns many of the workers covered by the extension.

*1. Categories of workers referred to in the Convention
and covered by other ILO instruments*

131. The list of categories of workers who are not considered in law as employed persons is illustrative. The extension of the functions of the system of labour administration to other categories of such workers is not excluded. By way of example the Convention mentions four categories of workers whose conditions of work and working life are dealt with in other ILO Conventions and Recommendations.

132. Tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers are covered by the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Rural Workers' Organisations Convention, 1975 (No. 141).⁸¹ Convention No. 82 lists, in Article 8, measures for the promotion of productive capacity and the improvement of standards of living of agricultural producers; Convention No. 129 provides, in Article 5, for the extension of labour inspection in agriculture to this category of workers; and Convention No. 141 establishes, in Article 3, paragraphs 1 and 2, the right of these workers to form and join organizations of their own choosing. The Tenants and Share-croppers Recommendation, 1968 (No. 132), goes into the relevant aspects of the question in greater detail.

⁷⁹ See also Memoranda prepared by the International Labour Office in reply to requests for clarification concerning instruments adopted by the International Labour Conference, GB.238/22/5, 238th Session, Geneva, 16-20 Nov. 1987.

⁸⁰ See also *World Employment 1996/97, National Policies in a Global Context*, ILO, 1996.

⁸¹ Convention No. 82 has been ratified by four member States, one of which has also ratified Convention No. 150; Convention No. 129 has been ratified by 35 member States, 13 of which have also ratified Convention No. 150; and Convention No. 141 has been ratified by 35 member States, 20 of which have also ratified Convention No. 150.

133. Self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice,⁸² are covered by provisions of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169). Convention No. 117 sets out measures to be taken to harmonize economic development with the healthy evolution of communities (Article 3), in order to promote productive capacity and improve standards of living of agricultural producers (Article 4) and, lastly, to secure for independent producers conditions which will give them scope to improve living standards and ensure the maintenance of minimum standards of living (Article 5). Recommendation No. 169 provides, in Paragraph 27(1), that the national employment policy should recognize the importance of the informal sector as a source of employment and, in Paragraph 29(2), that member States have a duty to try gradually to extend regulatory measures to the informal sector.

134. Members of cooperatives and worker-managed undertakings are covered by the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82) and the Co-operatives (Developing Countries) Recommendation, 1966 (No. 127). The Convention establishes, in Article 9, the need "to ensure for independent producers ... conditions which will give them scope to improve living standards by their own efforts and will ensure the maintenance of minimum standards of living as ascertained by means of official inquiries into living conditions, conducted after consultation with the representative organizations of employers and workers". The Recommendation, which covers several types of consumers' and producers' cooperatives, defines the role of cooperatives in the economic and social development of developing countries.

135. Lastly, persons working under systems established by communal customs or traditions⁸³ fall into the category of "members of tribal or semi-tribal populations in independent countries" covered by the Indigenous and Tribal Populations Convention, 1957 (No. 107), and Recommendation (No. 104), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The two Conventions require States ratifying them to take special measures in certain areas to ensure effective protection for this category of workers with regard to recruitment and conditions of employment and to provide vocational training, and social security and health coverage. Recommendation No. 104 deals with

⁸² For example, *Argentina* has adopted an Act (National Employment Act No. 24013 of 5 Dec. 1991) which seeks, inter alia, to promote employment through new initiatives and the reconversion of informal activities. Pursuant to section 90 of this Act, "programmes shall be implemented to encourage the productive reconversion of informal activities with a view to enhancing their productivity and their economic management and to launching new initiatives to create jobs".

⁸³ In *Argentina*, some employment promotion or social security programmes are applicable to indigenous populations; Act No. 23302 of 30 Sep. 1985 established the *Instituto Nacional de Asuntos Indígenas*, a decentralized body providing for the participation of indigenous peoples, the preservation of their culture and technical and agricultural know-how.

protection for this category of workers in recruitment and conditions of employment, vocational training, social security and health.

2. The informal sector

136. Some of the workers covered by Article 7 belong to the "informal sector", which accounts for a substantial part of the economy in many countries. They are the self-employed or regular or seasonal non-wage-earners working in small rural enterprises or the non-wage-earners of very small-scale units producing and distributing goods and services in urban areas. The situation of these workers has been examined in depth particularly in a report to the Conference, entitled *Rural employment promotion*⁴⁶ and in the Director-General's recent Report *The dilemma of the informal sector*.⁴⁷ The Director-General's Report states that "The general approach should ... be to regard the basic standards and provisions of labour legislation as goals to be attained progressively in the informal sector — beginning with the more viable enterprises in this sector — and to establish the institutions to promote their attainment, rather than to regard the precarious and unregulated nature of work in the informal sector as the norm for the rest of society." It adds that "The progressive application of labour standards does not, in all cases, have to wait until the informal sector starts to 'catch up' with the modern sector. There are certain core standards that are so fundamental that their non-observance should not be tolerated". The characteristics of the urban informal sector mentioned in the Report are to be found in rural areas too (traditional agricultural and small rural workshops).⁴⁸

3. Practice in States which supplied reports

137. A certain number of reports provided information on the functions that labour administration systems fulfil for the categories of workers who are not, in law, employed persons.⁴⁹ However, in developing countries, where

⁴⁶ ILO: *Rural employment promotion*, ILC, 75th Session, 1988, Report VII.

⁴⁷ *The dilemma of the informal sector*, ILO, Report of the Director-General, ILC, 78th Session, 1991. The Report indicates that a majority of informal sector workers are self-employed or unpaid family workers (p. 37). It defines the informal sector as referring to "very small-scale units producing and distributing goods and services, and consisting largely of independent, self-employed producers in urban areas of developing countries, some of whom also employ family labour and/or a few hired workers or apprentices ..." (p. 4). If the definition singles out developing countries, it is because in industrial countries the scale of the problem is quite different (p. 12).

⁴⁸ *ibid.*, note No. 2, p. 14.

⁴⁹ For example, *Australia* (providing partial protection to self-employed workers who do not engage outside help in the informal sector which concern only the three states of New South Wales, Victoria and South Australia); *Brazil* (creation of a support programme for employment creation and for remuneration for non-wage workers); *Cyprus* (social security legislation covers the self-employed and other similar workers just like wage workers); *Czech Republic* (labour legislation is applicable to labour relations between a cooperative and its members, and laws and

non-wage-earners account for a large proportion of the active population, labour ministries are as yet unable to discharge their important duties with regard to categories such as self-employed rural workers and regular or seasonal workers in small rural enterprises as well as workers in the informal sector as a whole. Sometimes it is local conditions and a lack of resources that prevent labour administration activities from being extended to such workers.

VI. Participation in international labour affairs

138. Article 11 of the Constitution provides that government departments of Members which deal with labour matters may "communicate directly with the Director-General through the representative of their government on the Governing Body of the International Labour Office or, failing any such representative, through such other qualified official as the government may nominate for the purpose". This article is the basis for most communication between Members and the International Labour Office. The growing number of bilateral and multilateral contacts at the international and regional levels and the resulting agreements on labour matters, including technical assistance, require countries to set up national bodies to be responsible for international labour affairs.

139. On the subject of national policy on international labour relations, Convention No. 150 provides, in Article 8, that "to the extent compatible with national laws and regulations and national practice, the competent bodies within the system of labour administration shall contribute to the preparation of national policy concerning international labour affairs, participate in the representation of the State with respect to such affairs and contribute to the preparation of measures to be taken at the national level with respect thereto". Contribution to and participation in international labour affairs by the competent bodies takes place in several areas:

- First, in the preparation of national policy: in all member States that have ratified the Convention or supplied a report, the laws and regulations

regulations concerning employment are applicable to the self-employed persons who do not employ other workers in sectors of agriculture, production or trade); *Finland* (the protective aspects of the system of labour administration also cover persons considered as non-wage workers by law); *Ghana* (the Ministry of Mobilization and Social Welfare has powers concerning the protection of farmers not engaging outside help); *India* (the Government fixes and revises wages of agricultural workers and extends certain laws to members of cooperatives); *Italy* (powers of regions concerning the protection of farmers not engaging outside help); *Spain* (extension of the system of labour administration on conditions of work, labour and safety and health inspection, as well as vocational training and guidance to the self-employed not engaging outside help in the informal sector); *South Africa* (extension of the legislation on employment to "atypical" categories of workers); and *Sweden* (protection of certain cultural workers). In certain countries the activities of the system of labour administration cover partially or wholly persons working under systems established by communal customs or traditions (*Algeria, Cuba, Denmark, Finland, Israel, Italy, Jamaica, Uruguay, Venezuela*).

empower the competent bodies of labour administration system to carry out this function.

- Secondly, in the representation of the State: labour administration plays a fundamental role in the representation of the State in international labour affairs. Participation in the meetings of the International Labour Conference is an excellent illustration of this. Government departments in charge of labour administration matters often share such representation with the Ministry of Foreign Affairs.
- Lastly, in the preparation of national policy on international labour affairs and in the State's representation in such affairs: under Article 8 of the Convention, the competent bodies within the system of labour administration must contribute to the preparation of the measures to be taken in this area.

140. All member States that supplied information have some kind of special department for international labour affairs, though it can vary considerably from one country to another.⁸⁸

⁸⁸ For example *Benin, Burkina Faso, China, Croatia, Mexico, Uruguay*.

CHAPTER III

Organization of the system of labour administration

General remarks

141. Under Article 1, paragraph (b), of Convention No. 150 and Paragraph 1, subparagraph (b), of Recommendation No. 158, the "system of labour administration" covers "all public administration bodies responsible for and/or engaged in labour administration — whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralized administration — and any institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organizations". The system of labour administration thus consists of three groups of main actors which differ in terms of the role they play and the interests they defend: the State, employers and workers. Each of these groups acts through different agencies and bodies at the national, regional and/or local level.

142. The competent public administration bodies responsible for and/or engaged in labour administration that make up the system of labour administration are generally as follows: the ministry of labour or a comparable body, which acts either directly through its central administration and decentralized regional and local structures, or indirectly through the bodies attached to it. These bodies, in which the social partners play a very active role, are as follows: parastatal bodies or public agencies under the supervision of the ministry of labour or that of other ministerial departments competent to carry out certain labour administration activities; ministerial departments (other than the ministry of labour) dealing either with national labour policy issues (such as migration, education and health) or with labour issues pertaining to a specific sector of economic activity (such as fishing, mines, transport or agriculture); and public administrations, agencies or bodies under the supervision of decentralized public authorities (i.e. local public authorities which are generally elected and independent of the central government authority, such as those of constituent States of federal States, regions, provinces or cantons).

143. There are several ways in which employers and workers and their organizations are involved in national labour policy issues. The institutional framework adopted by member States is to a large extent shaped by the nature of this participation. Article 5 of Convention No. 150 specifies three forms that participation of the most representative organizations of employers and workers

may take: "consultation", "cooperation" and "negotiation", but "it would be left to each country to decide in accordance with national practice what should be the subject, the level and the form of consultation, cooperation and negotiation in each case".¹ The "institutional frameworks" set up to coordinate tripartite relations within the system of labour administration are thus consultation bodies on the one hand and cooperation bodies on the other. Such bodies, being genuine tripartite discussion fora, aim at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organizations in an appropriate manner.

144. In order to obtain the best results, the labour administration system should have the support of all public administration bodies within the system with similar responsibilities and of employers' and workers' organizations. Since the functions assigned to the labour administration system by Convention No. 150 are diversified and complex, there must be genuine coordination of decision-making and action at all levels by the State and the social partners in every aspect of national labour policy. Article 4 provides that "each Member which ratifies this Convention shall, in a manner appropriate to national conditions, ensure the organization and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated".

145. Hence the importance of including within the system of labour administration, as prescribed by Article 9 of the Convention, a body responsible for securing such coordination and therefore for guaranteeing consistency within the system as a whole, and having the means "to ascertain whether any parastatal agencies ... and any regional or local agencies ... are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them". This Article specifies the ministry of labour or another comparable body as the public administration body competent to carry out these responsibilities.²

146. An examination of the different national systems of labour administration of the countries that have sent reports shows a wide variety of organizational frameworks. This diversity is the result of each country's institutional history, and the way in which its national conditions and hence its administrative structures have developed.

¹ See ILO: Memoranda prepared by the International Labour Office in reply to requests for clarification concerning instruments adopted by the International Labour Conference, paras. 1-9 of the part concerning Convention No. 150, document GB.238/22/5, 238th Session, Geneva, 16-20 Nov. 1987.

² As for Recommendation No. 158, it provides in Paragraph 11, subparagraph (2), concerning the specific field of employment, for the establishment of "a central body of the system of labour administration", which "should be closely associated with, or responsible for taking, appropriate institutional measures to coordinate the activities of the various authorities and bodies which are concerned with particular aspects of employment policy".

147. The ministry of labour's ability to carry out its task depends on the human, financial and material resources placed at its disposal by the Government. Article 10 of the Convention specifies that "1. The staff of the labour administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences" and "2. Such staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties."

148. The effectiveness of a system of labour administration thus depends on a well organized framework, consisting of a ministry of labour or comparable body to ensure coordination of the system's functions and responsibilities, coherent operation and adequate human, material and financial resources. This chapter describes the organization of labour administration systems, focusing on two aspects: first, the various institutional frameworks for participation by the social partners which exist in member States, with special attention being given to the different forms of consultation and the various aspects of decentralization of labour administration functions; second, the labour ministry in particular, with a synthesis of the different forms of central and decentralized organization of this public administration in member States. The third section looks at the human and financial resources placed at the disposal of the ministry of labour. The fourth describes the impact on labour administration of the current transformations taking place in the world economic environment. The fifth gives an overview of the technical assistance provided by the International Labour Office in the field of labour administration in the last ten years.

I. Organization of ministries of labour

149. The name by which the ministry responsible for labour administration is known varies considerably. In the vast majority of member States, this ministry is called the Ministry of Labour,³ Ministry of Employment or Manpower,⁴ of Human Resources,⁵ etc. However, while the titles of labour ministries provide a general indication of their areas of competence, they do not always reflect the functions that they carry out in reality.

A. Administrative structure

150. Recalling that the system of labour administration should be cohesive and effective, the Committee emphasizes that Convention No. 150 does not impose any particular form or administrative structure on member States.

³ For example: *Belarus, China, Denmark, Finland, United States, Venezuela.*

⁴ For example: *Egypt, Indonesia.*

⁵ For example in *Canada.*

151. Recommendation No. 158 suggests in general terms the area in which ministries of labour should operate and refers implicitly to their internal organizational structure. In fact, the operational terms of reference of labour ministries vary widely from one country to another, depending upon the particularities of each country. There is no typical pattern of the internal organization of a ministry of labour; these vary according to a country's institutional history, the history of social relationships, the model of government, degree of political openness and level of economic development. The frequent restructuring of labour ministries is as much a sign of changes in government policy as it is the result of adjustments dictated by the socio-economic exigencies of the moment.

152. These restructuring exercises, which are sometimes accompanied by a change in the ministry's title, often involve a shift in the area of competence of the public administration dealing with national labour policy.⁶ Restructuring processes are often good indicators of the role and importance assigned by the government to the ministry of labour, and result from the implementation nationwide of new national labour policy orientations or strategies, decentralization or the adoption of new management methods. Lastly, some governments have been led by needs and cost assessments to reorganize the functions and responsibilities of their labour ministries.

1. Organization of the central administration

153. At the central level, a ministerial administration consists of units among which functions and responsibilities are normally divided to ensure effective operation and consistent execution of its activities. There is often an intermediate level of decision-making between this level of execution and the Minister himself. In some countries advisory bodies are attached to the ministry at the level of the Minister.⁷

154. The units of the ministry differ in terms of the activities they carry out and may be broken down into three main categories, namely, general administrative services, support services and technical (or specialized) services.

⁶ This is the case, for example, in *Canada*, where the department now entitled Human Resources Development Canada was until 1994 called Employment and Immigration Canada; in *Finland*, where the area of competence of the Ministry of Labour was recently expanded; and in *Spain*, following the recent elections; in *Cuba*, *Jamaica* and the *United Kingdom*.

⁷ This is the case, for example, in *South Africa*, of the following bodies: the Advisory Council of Occupational Health and Safety, National Training Board, Unemployment Insurance Board, Wage Board and National Economic, Development and Labour Council (NEDLAC), whose structural rank is directly between the Minister of Labour himself and the Director-General of the Labour Department; and in *Venezuela*, where the Technical Commission for Social Studies and Legislation and the National Intersectoral Labour Council are directly attached to the office of the Minister of Labour (Source: *Ministerio del Trabajo: Memoria y Cuenta 1993, organigrama estructural del Ministerio del Trabajo (República de Venezuela, 1993)*); in *Finland*, the organizational chart of the Ministry of Labour places the Council for Labour Affairs between the Secretary General and its Special Adviser.

155. Those in the first group are generally responsible for managing the ministry's human, material and financial resources, which includes staff recruitment and training, as well as managing the internal material resources and the budget. The internal organization of these services varies widely from one country to another. The support services of general administrative services usually include legal services, advisory services, an international relations service, studies, research and statistics, and planning, documentation and communication services. Whatever their structural rank within the ministry of labour, these services or units exist in most member States at various levels of development.⁸

156. In some countries the government has set up a consultation body within the competent ministry, thus directly involving the social partners in activities relating to international relations,⁹ and whose responsibilities include drafting international conventions, agreements and treaties, and engaging in relations with international organizations, and the International Labour Organization in particular.

157. Concerning the internal organization of labour ministries in many member States shows that most, if not all, have specialized technical services. The tasks performed by these specialized services correspond to the functions carried out by the labour ministries in the different areas of labour administration within its ambit: labour protection, labour inspection,¹⁰ labour relations, employment and vocational training, social security, etc.¹¹

2. Field services

158. As an instrument for the implementation of national labour policy, the ministry of labour must be in direct contact with the public. This contact is maintained through its decentralized or field services at the regional and local levels. Vertical decentralization of authority guarantees the State's primary role

⁸ For example: *Argentina* (Directorate of International Affairs); *Cameroon* (Forecasting Division, Information, Documentation and Archives Service, International Labour Relations Service); *China* (Department of International Cooperation); *Gabon* (Documentation Service, International Relations Directorate, Studies and Documentation Directorate); *Lao People's Democratic Republic* (Information and Publishing Services, Dissemination of Information Service); *Netherlands* (Directorate for International Affairs); *South Africa* (Directorate: research policy and planning; Directorate: international relations); *Switzerland* (Bureau of International Affairs, Information and Press Service, Coordination Service); *Zaire* (Legal Services Division and Labour Statistics Division).

⁹ In *Uruguay*, for example, there is a Labour Relations Advisory Board within the Ministry of Labour and Social Security. It is attached to the General Secretariat and has the task of advising the Minister on all aspects relating to international and regional labour and social security organizations. Its functions include preparing reports on the application of international labour standards.

¹⁰ General Survey on labour inspection, Report III (Part 4B), ILC, 71st Session, 1985.

¹¹ See above, Ch. II.

in the supply of direct public services to enterprises, the social partners, particular categories of workers and other interested parties.

159. Devolution consists mainly of delegating some management and decision-making functions to technical and administrative services in the field. These functions relate in particular to occupational safety and health measures, labour relations, employment services, vocational training, labour statistics and labour inspection. Depending on the country, this devolution may go as far as considerable delegation of authority to the regional or local levels.

B. Means of action of ministries of labour

160. The effectiveness of a labour administration system also depends on the means placed at its disposal by the State to discharge the functions and responsibilities assigned to it. In this respect, Article 10 of Convention No. 150 provides that "1. The staff of the labour administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences" and that "2. Such staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties". The Committee notes that many countries have national schools of public administration to train senior administrators and managers and/or national centres to train middle management for the public administration, as well as national labour institutes to train specialized labour inspection or employment service staff. Most countries grant civil service status to staff of the labour ministry and certain public agencies.

161. The information provided by governments of ratifying countries concerning the application of Article 10 is often imprecise, in particular with regard to the independence of staff, and is rarely accompanied by figures on staff and budget; this has regularly led the Committee to send observations to certain countries.¹² However, based on certain information provided in reply to the Committee's observations or culled from activity reports of the labour administration or national statistical sources, it is possible to highlight certain trends characterizing the means available to labour administrations in some countries, without however claiming that they are representative.

162. As regards the industrialized countries, the available figures show that while labour administration budgets have increased overall, they are still relatively low and probably do not enable these administrations to perform their role fully.¹³

¹² For example, to *Burkina Faso, Congo, Cuba, Cyprus, Finland, Gabon, Guinea, Iraq, Italy, Portugal, Spain, and Zambia.*

¹³ See for example: OECD: *Employment outlook* (annual report). The New Zealand Council of Trade Unions (NZCTU) complained about the inadequate level of resourcing of the inspectorates.

163. As for the developing countries, an ILO study¹⁴ pointed out the inadequacy of the means available to the latter in the developing countries. It seems that labour administration is still one of the smallest budget items in these countries.

164. The precarious situation of labour administrations in the developing countries has been repeatedly mentioned in the ILO's numerous technical cooperation reports. The difficulty of recruiting and retaining competent staff in the absence of attractive wages, the inability of labour inspectors to visit enterprises for lack of transport facilities, and poorly equipped offices make it difficult or even impossible for labour administrations to discharge their functions effectively.

165. In addition to the fact that in most of these countries the competent authorities emphasize the inadequacy of the means at their disposal, there are two reasons to believe that the financial situation of labour administrations has not improved and is not likely to in the near future. The first reason has to do with the general context of public expenditure cut-backs attendant upon structural adjustment programmes. Whether it takes the form of staff reductions, wage cuts or a freeze on operating funds allocated to certain services, this austerity policy has affected all of the countries undergoing adjustment (and especially those of sub-Saharan Africa). Adjustment and restructuring measures vary in severity from one country to another and are not applied to the same extent across administrations, but it is obvious that labour administrations have suffered and continue to suffer from this situation; the more so since in many cases the growth of the economically active population in these countries increases the problems facing labour administrations. The second reason to believe that there has been a regression in the means available to labour administrations in the developing countries lies in the increasingly "hardline" approach adopted by the Bretton Woods institutions concerning public intervention in the labour market and the growing influence of this approach on the policies pursued in the developing countries. In the context of structural adjustment, the public service overall has undergone drastic cut-backs.¹⁵

166. The budget situation of labour administrations in the developing countries has direct repercussions on the conditions of work and qualifications of their staff, but especially on the services provided and hence on the conditions in which the population at large live and work. The Committee regrets that it is unable to assess the situation more clearly in the absence of both quantitative and qualitative data on the staff of labour administrations.

¹⁴ ILO, 1989.

¹⁵ Concerning the impact on labour and employment in general, see in particular World Bank: *World Development Report 1995: Workers in an integrating world* (in particular Chs. 15, 16 and 17). See also idem: *World Development Report 1996: From plan to market*.

II. General organization and operation of the system

167. In order to ensure the effective operation of a system of labour administration, which promotes social dialogue and maintains social peace, the Convention requires that employers and workers and their organizations participate actively alongside the public authorities in the design and implementation of national labour policy.

168. This participation by the social partners takes three forms. The first is consultation of employers and workers by the public authorities, which takes place within a body established in law with a mandate to put forward views. The second form of participation is cooperation in actually managing certain labour administration activities, thus enabling the social partners to play an active role in tripartite cooperation. The third and last form of tripartite participation is the negotiation of national agreements between public administrations and employers' and workers' organizations.¹⁶ Its constant involvement with the social partners singles out the public administration responsible for labour administration as a special case in the government apparatus. More than just users of the labour administration system, employers and workers are active participants, even in designing and managing its activities.

A. Bodies for consultation, cooperation and negotiation

169. An examination of national practices shows a wide variety of bodies for consultation, cooperation and negotiation. In particular, these bodies vary as to their role, composition, the duration of their term and local representation.

170. The role of consultation and cooperation bodies may take a number of different forms: consultation in preparing draft legislation and regulations, participation in the implementation of laws and regulations, participation in the design and formulation of government policy, participation in decision-making within bodies responsible for certain labour administration activities, and participation in managing boards of research institutions carrying out labour studies and research or issuing recommendations on national labour policy strategy and orientation.

171. The composition of these bodies also varies a great deal. They are traditionally tripartite, but may also often be joint bodies, comprising only the social partners. In other cases, they also include representatives of interest

¹⁶ In addition to these "institutionalized" forms of associating employers' and workers' organizations in the State's labour and social policy-making, many countries have a more informal or ad hoc practice of occasionally consulting employers' and workers' organizations on virtually all issues of special interest to them, which also provides an opportunity of consulting civil society, represented by non-governmental organizations, associations or interest groups. Such practices are neither systematic nor regularly scheduled and may also be set up at the initiative of employers' and workers' organizations. They exist, for example, in *Australia, Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Hungary, Italy, Mexico, Netherlands, Norway, Portugal, Senegal, South Africa, Spain, United Kingdom and Zambia*.

groups and independent experts enjoying a high degree of credibility or possessing considerable knowledge in the field concerned. These institutional structures are usually standing bodies.¹⁷ Tripartite participation generally takes place at the national inter-occupational level, but may also occur at lower levels — regional, local or sectoral.

1. *Permanent institutionalized forms of consultation*

172. The Committee recalls the relevant ILO standards, in particular the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113),¹⁸ as well as a recent report on tripartite cooperation at the national level on economic and social policy.¹⁹ The latter defines the concept of "tripartite cooperation" to mean "... that the parties must be willing, despite the undeniable divergences between their interests to examine their common problems and seek compromise solutions that would be acceptable to each of them".²⁰ It specifies the different forms that such cooperation may take at the national level. This survey will therefore confine itself to describing how such tripartite cooperation takes place in the fields of labour administration.

173. The idea that employers' and workers' organizations should be routinely consulted on changes in labour legislation and other actions contemplated by governments that directly affect labour relations is accepted in most democratic societies. The tripartite councils whose views on labour legislation are generally sought by the competent public authorities are national

¹⁷ It is interesting to note, however, that in the *United States*, the Administrative Procedures Act 1970 only requires that proposed legislation and regulations be published to allow interested persons to express their views, without any organized consultation through standing bodies. In addition, the Federal Advisory Committees Act (FACA) of 1972 (Public Law 92-463, 92nd Congress, H.R. 4383, Oct. 1972) limits the term of these bodies to two years, which may be renewed; s. 14 regulates the termination of advisory committees, providing that: [a] (1) "Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless — [A] in the case of an advisory committee established by the President or an officer of the federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or [B] in the case of an advisory committee established by an Act of the Congress, its duration is otherwise provided for by law." (...) [c] "Any advisory committee which is renewed by the President or any officer of the federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate."

¹⁸ This instrument provides that "measures appropriate to national conditions should be taken to promote effective consultation and cooperation at the industrial and national levels between public authorities and employers' and workers' organizations (...) with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living".

¹⁹ *Tripartite consultation at the national level on economic and social policy*, Report VI, ILC, 83rd Session, 1996.

²⁰ *supra*, p. 8.

labour councils or economic and social councils.²¹ In addition to these consultation procedures prescribed by law, in many cases there are special tripartite consultation procedures for the drafting of labour legislation. This is true, for example, of *Bulgaria, Hungary and Romania*, whose Governments have fully integrated the social partners in the legislative reform process.²²

174. As regards consultation bodies in national practice, a distinction can be drawn between bodies of the economic and social council type — which are generally independent of the executive branch and whose opinions are sought not only on major economic and social policy issues but also on national labour policy — and more specialized consultation bodies that are more directly linked to the ministry of labour. These include national labour advisory councils and sectoral advisory councils.

(a) *Economic and social councils*

175. Higher consultation bodies are the visible expression of the State's willingness to involve the social partners at the highest level in the debate on economic and social issues. Mainly since the 1960s, many countries²³ in Europe and the rest of the world have set up economic and social councils. Established under the Constitution or by law, these councils are generally tripartite or even multipartite. In some countries, however, only the social partners are involved in consultation at this level.²⁴ But these joint bodies are not always entirely limited to the social partners, since the government may be indirectly involved, for example in the appointment or nomination of the council chairperson.²⁵ While some of these bodies deal only with economic and/or social issues, many handle such specific matters as the promotion of social dialogue, labour relations, wage policies or labour market issues.²⁶

176. The existence of these institutions in many countries is a strong indication of a desire for democracy and the partners' willingness to maintain social peace. In *South Africa*, for example, many changes occurred with the dismantling of apartheid, including a more equitable national labour and employment policy aimed at opening up the labour market to the entire population of South Africa, as well as the creation of new means of social dialogue. A number of institutions are to be set up and transformed under the

²¹ *Belgium, Benin, Brazil, Burkino Faso, Cameroon, Gabon, Ghana, Italy, Netherlands, Senegal, Spain, Tunisia and Zaire.*

²² R. Kyloh (ed.): *Tripartism on trial: Tripartite Consultations and Negotiations in Central and Eastern Europe* (ILO, Central and Eastern European Team, 1995), p. 18.

²³ *Australia, Burkina Faso, Cameroon, Canada, Cape Verde, Gabon, Guinea, Hungary, Israel, Jamaica, Lebanon, Madagascar, Netherlands, Senegal and Tunisia.*

²⁴ *Belgium, Central African Republic, Denmark and Guinea.*

²⁵ This is the case, for example, of the Economic and Social Council in *Spain* and also in *Belgium* and the *Netherlands*.

²⁶ For example in *Algeria, Austria, Denmark and Italy.*

Reconstruction and Development Program (RDP) pursued by the Government since 1993. The reorientation of programmes and the organization of the Ministry of Labour, as well as the creation of the National Economic, Development and Labour Council (NEDLAC) in February 1995, were among the first measures to be carried out by the Government.²⁷

(b) National labour advisory councils and similar bodies

177. National labour advisory councils (committees or boards) are an especially appropriate means of consultation on national labour and employment policy issues. In many countries,²⁸ national labour councils are generally assigned the task of studying issues within the ambit of the labour administration system, issuing opinions, stating the reasons on which they are based, and participating in the drafting of labour legislation. While these councils and the public authority to which they are attached have much in common in terms of composition, which is usually tripartite, they may differ considerably in other ways.

178. Some councils are expected to give their views on a wide range of subject areas (for example, conditions of work, employment, vocational guidance and training, placement, labour flows, migration, improving the material conditions in which workers live, social welfare).²⁹ Others have the task of studying any difficulties arising in the negotiation of collective agreements or expressing their views on matters relating to the conclusion and application of collective agreements, and studying data that might serve as a basis for fixing the minimum wage (such as the minimum living wage and general economic

²⁷ The emergence of the practice of tripartite consultation in Central and Eastern Europe is a relatively recent phenomenon. The first steps towards tripartism were taken by *Bulgaria* (National Commission for the Coordination of Interests, set up in 1990); *Hungary* (National Council for Reconciliation of Interests, set up in 1988); *Poland* (Tripartite Commission on Social and Economic Issues, set up in 1994); and *Russian Federation* (Tripartite Commission for the Regulation of Social and Labour Relations, set up in 1992).

²⁸ *Argentina* (National Labour and Employment Council); *Australia* (National Labour Consultative Council); *Bahrain* (Higher Labour Advisory Council); *Bangladesh* (National Tripartite Consultative Council); *Belgium* (National Labour Council); *Benin* (National Labour Council); *Burkina Faso* (Labour Advisory Board); *Cameroon* (National Labour Advisory Board); *Congo* (National Labour Advisory Board); *Costa Rica* (Higher Labour Council); *Cuba* (State Committee on Labour and Social Security); *Egypt* (Higher Labour Advisory Council); *Gabon* (Labour Advisory Board); *Ghana* (National Advisory Committee on Labour); *Hong Kong* (Labour Advisory Board); *Italy* (National Council for the Economy and Labour); *Jamaica* (Labour Advisory Council); *Lebanon* (National Labour Council); *Malta* (Labour Board); *Netherlands* (Labour Foundation); *Philippines* (Labour Advisory Consultative Council); *Senegal* (National Advisory Council on Labour and Social Security); *Tunisia* (Labour Council); *Zambia* (Tripartite Consultative Labour Council).

²⁹ *Cameroon, Cuba; United States*: the Department of Labor (DOL) has several advisory committees on key labour issues.

conditions).³⁰ Some councils deal with problems concerning occupational safety and health in enterprises.³¹ In one country, the National Labour Council is empowered to conclude national collective agreements.³² While the views expressed by the councils as part of the tasks assigned to them by law are not usually binding, they often have more specialized advisory functions pursuant to labour legislation which requires that they be consulted beforehand³³ on all or some of the measures to be taken to implement such legislation.

179. In countries where there are no permanent advisory bodies along the lines of economic and social councils, the National Labour Council, if there is one, is also consulted on national economic and social policy issues.³⁴ National labour councils are generally tripartite, with equal representation of employers' and workers' organizations.

(c) *Sectoral advisory councils*

180. In some countries, consultation on subjects relating to different fields of labour administration takes place mainly in specialized advisory bodies such as labour relations advisory councils,³⁵ national vocational training and/or employment councils,³⁶ occupational safety and health advisory councils,³⁷ or minimum wage fixing advisory boards.³⁸

³⁰ For example in *Burkina Faso*.

³¹ For example in *Guinea*: ss. 288-293 of the Labour Code establish the Advisory Commission on Labour and Labour Legislation.

³² *Belgium* (the Act of 5 December 1968 respecting collective agreements and joint committees empowers the National Labour Council to conclude collective agreements that may cover more than one sector or all sectors).

³³ For example in *Belgium* and *Cameroon*.

³⁴ This is the case, inter alia, in *Costa Rica*, where the Higher Labour Council, a tripartite body, is responsible for proposing solutions and taking initiatives on national economic and social issues. In *Mozambique*, the Advisory Labour Committee set up in 1994 under the Ministry of Labour has the task of promoting and stimulating dialogue and concertation between the Government and employers' and workers' organizations on national economic, social and labour policy issues.

³⁵ For example in *Australia*, *Canada* and the *United States*; the German Trade Federation (DGB) alleges that the Government has damaged the effectiveness of the Federal Institution of Labour (BA) in areas such as employment creation, job counselling and placement by using funds allocated to it to pay the costs of integration of immigrants and refugees, which should be borne by general taxation. The role of private agencies in these fields has increased, according to the DGB, resulting in unequal competition.

³⁶ For example in *Spain*. In the *United Kingdom* the TUC commented that the previous tripartite training system has been replaced by an employer-led market-driven voluntary system which has no obligation to involve trade union representatives. See Report III (Part 4A), ILC, 82nd Session, 1995, Convention No. 150, United Kingdom.

³⁷ For example in *Denmark* and the *United Kingdom*.

³⁸ For example in *Germany*.

181. In addition to consultation bodies enabling the social partners to participate in major national economic, social and labour policy debates, many countries have within their labour administration system, in particular at the national level, a more or less extensive network of specialized consultation bodies dealing with a specific area of national labour policy, such as conditions of work, labour relations, employment, vocational training or social security. These may be, for instance, councils or boards dealing with minimum wages, vocational guidance and training, labour relations, and safety and health at work. National labour policy also includes measures and actions aimed at protecting certain categories of workers (such as women, the disabled, young persons and children, migrant workers or ethnic minorities), or dealing with specific issues related to conditions of work and employment in certain branches of activity (for example seafarers, agricultural workers, miners, self-employed persons, etc.). Accordingly, this national consultation network is often reinforced by consultation bodies attached to the ministry of labour, such as a Higher Council on the Disabled, an Advisory Committee on Equal Opportunity between Women and Men, or a National Council on Agricultural Labour.³⁹

182. Because of its impact on other economic indicators, wage fixing has for a long time been the subject of bipartite or tripartite participation, as can be seen from national practice. The General Survey of the relevant ILO standards on minimum wage fixing⁴⁰ identified some 60 tripartite institutions throughout the world⁴¹ set up specifically to deal with minimum wage fixing issues, most of them established in law.

183. The Committee notes the existence in many countries⁴² of bipartite or tripartite consultation structures dealing with specific areas of national labour

³⁹ For example in *Denmark*: National Handicap Council, Danish Council of Organizations of Disabled People, Ethnic Equality Board; in *Italy*: National Committee for the Implementation of Principles of Equality of Treatment and Opportunity between Working Men and Women; in the *Netherlands*: Commission for Equal Treatment of Men and Women in Employment; in *Sweden*: Ethnic Discrimination Board; in the *United Kingdom*: Agricultural Wages Council, Equal Opportunity Commission, Women's National Commission; in the *United States*: (where such bodies are usually created for a limited period of existence) Glass Ceiling Commission, Advisory Committee on Veterans' Employment and Training.

⁴⁰ See also the General Survey on minimum wages: wage-fixing machinery, application and supervision, ILC, 79th Session, 1992.

⁴¹ For example *Argentina* (National Council on Employment, Productivity, the Minimum Wage and Wage Adjustment, set up in 1992), *Austria*, *Bahamas*, *Bangladesh*, *Benin*, *Burundi*, *Cameroon*, *Central African Republic*, *Colombia*, *Costa Rica*, *Dominican Republic*, *Ecuador*, *Egypt*, *Equatorial Guinea*, *Germany*, *Ghana*, *Guinea*, *Guyana*, *Honduras*, *India*, *Jamaica*, *Malta*, *Mauritius*, *Mexico*, *Namibia*, *Nicaragua*, *Pakistan*, *Portugal*, *South Africa*, *Syrian Arab Republic*, *Togo*, *Tunisia*, *United Kingdom*, *Uruguay* and *Zambia*.

⁴² In the field of labour relations: *Australia*: Australian Industrial Relations Commission (1905, renamed in 1987); *Austria*: Central Conciliation Board (1962); *United Kingdom*: Advisory Conciliation and Arbitration Service (1974). In the field of employment and vocational training: *Cape Verde*: National Committee on Employment and Vocational Training, an advisory body with tripartite representation. In the field of health and safety at work: *Côte d'Ivoire*, *Czech Republic*.

policy such as labour relations, safety and health at work, employment, vocational guidance and training and social security. The Committee notes with interest the tendency in recent years for government policy in several countries to involve the social partners to a greater extent in advisory activities, in particular on subjects with an indirect bearing on national labour policy matters and linked to the concerns arising out of the globalization of the economy.⁴³ This broadening of participation by employers and workers and their organizations is reflected in institutional terms by the presence in a number of countries of consultation bodies set up specifically to deal with issues relating, *inter alia*, to productivity, work organization or new technologies.⁴⁴

184. Lastly, in some countries the ministry of labour is often involved in the debate on national policy on migration for employment, if not directly responsible for this area itself.⁴⁵ In some of these countries,⁴⁶ this debate has been opened up to the social partners, with the setting up of tripartite consultation bodies by the competent authorities.

2. Cooperation and negotiation bodies

185. Generally speaking, cooperation bodies differ from consultation bodies in that they intervene at the implementation stages of national labour and employment policy because of their executive function with respect to the activities for which they were specifically set up.

186. Whatever the terms used to refer to them — *établissements publics* in French-speaking countries, independent agencies in the countries influenced by the English-speaking tradition or *organismos autónomos* and/or *entidades autónomas* in Spain and certain Latin American countries, the Committee notes that cooperation bodies competent to deal with labour administration matters exist to varying extents in virtually all member States.⁴⁷ Their presence within the national labour administration system often reflects a twofold intention on the part of governments: first, to manage labour administration activities, which are numerous and varied, more efficiently, in particular by decentralizing some of them to cooperation bodies, streamlining the role and structure of the Ministry

⁴³ Benin: National Commission to follow up the Application of the Structural Adjustment Programme. Mexico: Alliance for Economic Recovery.

⁴⁴ In Argentina, the National Council on Employment, Productivity, the Minimum Wage and Wage Adjustment. In Denmark, for example, the Working Environment Council.

⁴⁵ The Committee notes that the Governing Body, at its 267th Session (November 1996), had decided to invite governments to provide, in 1998, reports under article 19 of the Constitution on Convention No. 97 on Migration for Employment (Revised), 1949, and Recommendation No. 86 on Migration for Employment (Revised), 1949, and on Convention No. 143 on Migrant Workers (Supplementary Provisions), 1975, and Recommendation No. 151 on Migrant Workers, 1975.

⁴⁶ Australia, Austria, Canada, Netherlands, United States.

⁴⁷ For example in Cape Verde, where the Institute for Employment and Vocational Training is in the implementation phase and all labour administration activities remain centralized.

of Labour; and second, to involve employers' and workers' organizations more closely in managing some labour administration activities. In most countries, executive functions which normally fall within the ambit of state administrations are assigned to parastatal bodies.⁴⁸

187. Generally speaking, the characteristic feature of parastatal bodies is their autonomy, which distinguishes them from field services or decentralized departments of ministries of labour which represent the ministry at regional and/or local level but are directly under the authority of the Minister or senior ministry officials. Parastatals are legal entities with a distinctive identity within the administrative apparatus. Indeed this relative independence is reflected in their organization. In most countries they are run by a managing board, generally with a tripartite composition, and have their own budget.⁴⁹

188. In most countries parastatals' autonomy is counterbalanced by the fact that they operate under the supervision of a public authority responsible for labour administration, both at the central and at the regional level.⁵⁰

189. Lastly, parastatal agencies are specialized and their areas of competence, which are often varied, are usually specified and assigned by legislation. Most parastatal bodies operate in the following areas: employment, vocational training and social security. In many countries there are a wide range of public agencies within the labour administration system, such as employment agencies or national employment offices,⁵¹ national labour institutions, national occupational safety and health institutions, national research and study institutions,⁵² vocational training centres⁵³ and national social security funds.⁵⁴

190. The decentralization of executive functions mainly concerns technical aspects, the preparation of specific studies and the collection of statistical data. Regional, local or decentralized authorities play a predominant role in implementing national labour policy. Generally speaking, the more highly developed the system of labour administration, the higher the degree of decentralization.

⁴⁸ This is the case, for example, in *Tunisia*, where active employment policy designed within the Ministry of Vocational Training and Employment is implemented by the Tunisian Employment Agency, the Tunisian Vocational Training Agency and the National Centre for Continuous Training and Occupational Advancement.

⁴⁹ *Argentina, Finland, Spain, Tunisia, Uruguay.*

⁵⁰ In the *Netherlands* there is the example of the Central Employment Services Board under the financial control of the Ministry of Employment and Social Affairs. Similar bodies are found also in *Lebanon* and *Syrian Arab Republic*.

⁵¹ For example in *Cape Verde*; *Côte d'Ivoire*: Agency for the Study and Promotion of Employment, 1993.

⁵² *Ghana*: Statistical Service Board.

⁵³ For example in *Côte d'Ivoire*: Vocational Training Development Fund.

⁵⁴ For example in *Austria*.

191. Involvement of the social partners in national labour policy design and development is a common practice in several countries.⁵⁵ In most cases this takes the form of negotiations between the government and employers' and workers' organizations. These negotiations deal with subjects such as wage policies, improvement of enterprise productivity, employment and social equity.

B. Collective labour dispute settlement

192. Many systems of labour administration provide conciliation and mediation services for collective labour disputes. There are also in some member States, quasi-judicial bodies that have functions of investigation, mediation and decision-making. These functions may be carried out as an intermediate dispute resolution machinery between conciliation procedures and the judicial procedures or for dealing with certain practices prohibited by laws or regulations.⁵⁶

C. Coordination

193. Modern systems of labour administration form a network of bodies coordinated by a ministry of the central government (often the ministry of labour) whose functions and responsibilities are partly decentralized, so that not only the implementation but also the formulation of national labour policy is carried out by bodies attached to the ministry and, to an increasing extent, by decentralized administrative authorities.⁵⁷

194. Two factors may encourage a better and more coherent operation of the system. The first is interaction between the different players in the system; this is all the more necessary and structured if several players are involved in the same field or in related activities. The second is coordination of the decisions and action taken. In this respect, Article 9 of Convention No. 150 provides that

⁵⁵ In *Australia*, since 1983 wage policy has been governed by agreement negotiated between the trade unions (the Australian Council of Trade Unions) and the federal Government. Other examples are: *Argentina, Austria, Colombia, Hungary, Italy, Mexico, Spain*.

⁵⁶ In *Australia*: Australian Industrial Relations Commission (1905, renamed in 1987). In *Canada*, the province of Alberta has the Labour Relation Board and Public Service Employee Relations Board which supervise collective bargaining and also hear complaints from employers' and workers' representatives relating to representation, collective bargaining and implementation of collective agreements. In *Japan*, the tripartite Regional and Central Labour Relations Commission provides conciliation, mediation and arbitration procedures as well as rules on unfair labour practices. In the *United States* the National Labour Relations Board (NLRB) which is composed of an independent Board and a General Counsel deals with unfair labour practices; the Occupational Safety and Health Review Commission (OSHRC) rules on cases of disagreements over results of safety and health inspections.

⁵⁷ For example, in the *United States*, in addition to the general coordination through the administrative powers of the President (appointment and removal and budget and legislative proposal powers), there are a variety of specific types of coordination of administrative bodies on labour activities such as Executive Orders, Presidential Proclamations, Memorandum of Understanding (MOU), ad hoc policy committees and formal inter-agency committees. There are hundreds of such MOUs between federal agencies and between federal and state agencies.

"with a view to the proper coordination of the functions and responsibilities of the system of labour administration, ... a ministry of labour or another comparable body shall have the means to ascertain whether ... parastatal agencies ... and ... regional or local agencies ... are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them".

195. Nearly all countries have a public administration body responsible for or engaged in labour administration, either directly under the executive power or at the highest decision-making level. In most cases this body is called the ministry of labour and plays a central role in the labour administration system. In most countries the ministry of labour is responsible for coordinating the preparation, implementation, checking and review of national labour policy. Coordination and supervision at the regional level may differ from one country to another. In some countries, the areas of activity of labour administration are distributed among several ministries, with each ministerial department acting as a central body in the field of labour administration assigned to it.³⁸ With so many players involved in decision-making, coordination of policies and action at the national and regional levels can give rise to difficulties and raise the question of machinery to be introduced to ensure that the system of labour administration operates as a coherent whole.

III. Impact of economic and social changes on labour administration

196. The Committee recalls that the current transformations in the world economic and social context, both at the national and at the international level, should be taken into account in order to assess fully the evolution and development of national systems of labour administration.³⁹

197. The world economic environment has been marked by two events which are likely to have a lasting impact in the years to come — the globalization of the economy and the spread of the market economy. The integration of national economies into world trade has occurred at the cost of

³⁸ This is the case, for example, in *Tunisia*, where the areas of activity of labour administration are divided between the Ministry of Social Affairs and the Ministry of Vocational Training and Employment. In *Brazil*, the coordination of policies and action are carried out by the Ministry of Labour and the Ministry of Social Welfare. In the *United Kingdom*, the ministerial department responsible for national labour policy was abolished in July 1995 and its functions distributed among the Department of Education, which became the Department for Education and Employment (responsible for general manpower policy, vocational guidance, equal pay, equal opportunity in employment and the disabled), the Department of Trade and Industry (responsible for labour relations and individual employment rights), the Department of the Environment (responsible for safety and health at work) and the Central Statistical Office, responsible for the collection of labour and employment statistics (with the exception of training statistics).

³⁹ See above, Introduction, paras. 21-24.

deep-rooted restructuring, which is resulting in considerable changes in the world of work. The restructuring has many consequences for workers, enterprises and the labour market. The new pressure for productivity imposed by an increasingly competitive environment has led enterprises to reduce their labour costs and adopt changes in their organization and human resources management. The general increase in unemployment, pressure on wages, the deterioration of conditions of work, the increased precariousness of employment and the emergence of new forms of employment, as well as the changing skills and qualifications required for the new jobs, are all factors which can give rise to individual and collective labour disputes.

198. In this context, the role of labour administrations should take on particular importance through their interventions to improve conditions of work, increase the transparency and fluidity of the labour market, develop vocational training that is adapted to needs, settle and prevent labour disputes and develop social dialogue. In order to play this role effectively, labour administrations need constantly to adapt their activities and services to current and future changes. This process of constant adaptation requires new forms of organization, management and intervention that allow them to develop rapidly and improve their technical capacities. However, many labour administrations are under-resourced and cannot take on these responsibilities, particularly in view of the drastic cuts in public budgets made by governments. Labour administrations therefore also have to be able constantly to justify the value of their activities and their cost.

199. In the context of regional economic integration groups, questions relating to labour administration have begun to be the subject of specialized agreement on social matters. This is the case for example of the North-American Free Trade Agreement (NAFTA), the Southern Common Market (MERCOSUR), the ANDEAN GROUP, and the European Union (EU).⁶⁰ In addition to ensuring the free movement of persons, goods and capital, these provide for labour, employment and human resource development, as well as cooperation between employers and workers. The Committee notes these developments and will continue to follow their evolution.

200. It can be observed that labour administrations have been shouldering an increasing amount of responsibility in the context of States' economic policy, faced as they are with increasing problems, in particular in the field of employment. However, at the same time their means have been limited by budgetary restrictions dictated by the unfavourable economic context. None the less, it is clear that many countries have undertaken a reorganization of their labour administration with the aim of improving the effectiveness of their

⁶⁰ Examples of such other arrangements are the West African Economic and Monetary Union (l'Union Economique et Monétaire Ouest Africaine; the Preferential Trade Area for Eastern and Southern African States; the Southern African Development Community; the Economic Community of Central African States.

services.⁶¹ The Committee considers that a coherent and effective labour administration such as that advocated by the Convention is a useful and indispensable instrument for dealing with the problems that arise.

IV. Technical assistance provided by the International Labour Office

201. The technical assistance provided by the International Labour Office, in particular in the context of the active partnership policy and the activities of the multidisciplinary teams, has covered a wide range of forms, including direct advisory services to countries⁶² on request, national tripartite training workshops and seminars,⁶³ national technical cooperation projects⁶⁴ and subregional and regional meetings and seminars.⁶⁵

202. Until the active partnership policy was implemented and the multidisciplinary teams introduced, member States requested ILO technical assistance essentially with a view to developing, improving or strengthening their operational services (labour inspectorates and employment services) and the specialized services of their ministries of labour, or to improve their labour administration and provide training to the staff concerned.

203. Once they were set up the multidisciplinary teams proceeded, in close collaboration with the national authorities, to draw up country objectives, fixing global priorities. In this context, technical assistance has been expanded to include reviewing the functions of the competent bodies within the system, the structures to be set up to provide an enabling framework for the necessary cooperative interaction, and the organization and management of the labour administration system as a whole. Accordingly, in addition to comprehensive actions aimed at rebuilding labour administrations in countries emerging from conflict or civil war,⁶⁶ the Office has been requested by member States to carry out missions to analyse their entire labour administration system, including the participation of the social partners, and to set up the structures and procedures,

⁶¹ For example, *Argentina, Republic of Korea*.

⁶² *Brazil, Benin, Chile, Niger*: technical assistance to strengthen the capacities of labour ministries (1996).

⁶³ *Namibia*: training course for labour administrators (1985).

⁶⁴ *Argentina, Colombia and Costa Rica*: reorganization of labour ministry (1986). *Albania* (1994-95), *Azerbaijan, South Africa* (1995).

⁶⁵ 1986 — seminars concerning the benefits and problems of labour policy in South Pacific countries. Eastern and Central European countries, and countries from the ex-USSR — seminar on most recent and developed labour administration systems and their modern organization (1995). Asia — seminar on labour administration policies for employment development (1990).

⁶⁶ Operations of this kind have been carried out by the Labour Administration Branch in collaboration with the regional offices and the multidisciplinary teams, in particular in *Albania, South Africa and Viet Nam*.

train the staff and allocate the means necessary to enable the labour administration system to function effectively. Technical assistance activities have thus been developed according to the priorities set by member States.

CHAPTER IV

Difficulties of and prospects for ratification

I. Initial comments

204. The Committee stresses that the main aim of a general survey is to assess the state of national law and practice in a particular field and to identify difficulties in the application and prospects for ratification of ILO Conventions. However, it does not always serve as a vehicle for evaluation if sufficient information is not provided by the member States. In the case of this survey, only a limited number of governments have supplied information on difficulties of application, on the reasons they believe might prevent ratification and on their intention to ratify the Convention.

205. Furthermore, as only some governments provided information on the material means and human and financial resources of their systems of labour administration, this made it difficult to evaluate the effectiveness of the system and the services as well as the quality of services provided to the social partners and other parties concerned.

206. The Committee has examined the information received and reiterates its hope that general surveys become the "ideal vehicle for evaluation" that they should be, as suggested by the Director-General in a recent Report to the Conference.¹

II. Difficulties and problems of ratification

207. The Government of *Bangladesh* did not envisage ratifying the Convention for the moment, because it felt this would be unnecessary.

208. The Government of *Mauritius* felt that the Convention could not be ratified at this stage of the country's development because the present labour administration system did not allow for the delegation of certain activities to non-governmental organizations, particularly employers' and workers' organizations, as provided for in Article 2 of the Convention.

¹ ILC, 81st Session, 1994, Report of the Director-General, *Defending values, promoting change*, Ch. III, "Standards: A broader approach", p. 49.

209. The Government of *Senegal* pointed out that Article 2 of the Convention could constitute an obstacle to ratification and in the current state of the national labour administration, no other measures are envisaged to give effect to the Convention.

210. The Government of *South Africa* stated that delegation of certain activities of labour administration to non-governmental organizations in the sense of Article 2 of the Convention has not been the tradition in the country, although it did not cite this as an obstacle to ratification.

211. The Committee refers to paragraph 7 of the Introduction and to Chapter I, paragraph 9, of this General Survey, and recalls that a member State ratifying the Convention is not bound to delegate the activities of the labour administration. Indeed, Article 2 of the Convention leaves it up to the competent authority of each country to decide whether the national legislation allows or even requires such a delegation.² It is only when a government delegates various labour administration activities to non-governmental organizations, for instance, employers' and workers' organizations, that the government must ascertain, as stipulated under Article 9 of the Convention, that the non-governmental organizations operate in accordance with national laws and regulations and adhere to the objectives assigned to them.

212. The Government of *Oman* stated that non-ratification of the Convention was due to the fact that it had only been a Member of the ILO since 1994.

213. Political and administrative structures that are fairly inflexible might constitute an obstacle to ratification. The Government of *Singapore* stated that its labour laws did not provide for a formal labour administration system. However, it stressed that consultations with the social partners and tripartite consultations on labour issues³ were regularly held on an informal basis. The Government did not believe that bringing national legislation in line with the provisions of the Convention was a necessity as it felt that such legislation and programmes met the needs of workers and employers.

214. The extension of the labour administration system, as stated under Article 7 of the Convention, raises a problem for several governments (for example, *Argentina, Austria, Cameroon, Canada, India, Malta, Niger, New Zealand, Turkey*).

215. Although the labour administration system in *Argentina* does not include the categories of workers mentioned under Article 7 of the Convention, the Government pointed out that a number of employment promotion or social security programmes nevertheless covered these workers. The National Employment Act No. 24013 of 5 December 1991, for example, stipulates that

² Article 2 of the Convention: "A Member which ratifies this Convention may, in accordance with ... national practice, delegate ...".

³ For example with respect to occupational safety and health legislation.

the Ministry of Labour and Social Security should periodically draw up programmes to promote the employment of workers experiencing serious difficulties in entering the workforce. These programmes could include: programmes for unemployed youths; programmes for redundant workers having difficulty re-entering employment; and programmes for protected groups and the disabled. Similarly, this Act set out to promote employment by introducing new ventures and rationalizing the informal sector. The Committee expresses the hope that the activities described by the Government of Argentina will be successful and that the ratification of the Convention might be envisaged in the near future.

216. The Government of *Austria* stated that Article 7 of the Convention was not applicable to its national system of labour administration because the protection provided by the legislation in this context was restricted to dependant employees. As there were very few self-employed workers, the Government did not feel it appropriate to include measures concerning these workers in its labour legislation.

217. The Government of *Cameroon* pointed out that the reasons for which it had not ratified the Convention were linked to Article 7, in so far as the informal sector was not yet subject to inspection by the labour inspectorate. However, the Government favoured making this sector subject to such inspections and that the ILO might provide technical assistance to Cameroon to enable it to extend the supervision of the system of labour administration to self-employed workers.

218. The Government of *India* also stressed that the scope of Article 7 of the Convention was a major problem. It would not be possible to ratify the Convention so long as steps were not taken to extend the labour administration to the large categories of workers described under this provision of the Convention.

219. The Government of *Malta* explained that it was difficult to ratify the Convention because the definition in its legislation of the term "worker" was restricted to persons employed under a "contract of service" which thus excluded self-employed workers. However, the latter accounted at the time of writing for 11.8 per cent of the working population and this percentage was expected to increase. Indeed, there was a draft bill to replace the present Conditions of Employment (Regulation) Act. The new Act would cover agreements between self-employed workers or their representatives and the persons who give them work. It was also envisaged that the new law would make it possible for self-employed persons to enter into industrial agreements, provided that the organizations representing them were recognized by the Industrial Relations Act. Cooperation both of the traditional kind (mainly in agriculture and fisheries) and the new type (of the self-employed in all sectors (such as for community work of the unemployed to help themselves)) come under the Cooperatives Societies Act, the Ministry of Education and Human Resources encouraged the formation of cooperatives while a Support Unit

provided technical services including management consultancy services to cooperatives.

220. The Government of *Niger* also felt that its labour legislation might cause difficulties of application, especially with respect to Article 7 of the Convention. Indeed, the specific social and economic conditions prevailing in the country would impede ratification of the Convention. However, preparations were under way to reform the labour legislation. In this context, the Government mentioned that a tripartite seminar had been organized by the Minister of Labour Affairs, together with the ILO, to pave the way for this legislative reform. On this occasion, the ratification of a certain number of Conventions — including Convention No. 150 had been recommended. The Government of Niger had obtained the support of the ILO for this reform.

221. The Government of *New Zealand* pointed out that its national labour legislation did not provide for the extension of provisions in the Convention to all persons who were not actually “employees” because much of its legislation, such as the Employment Contracts Act 1991, applied only to employees. The labour courts had established a number of tests to determine whether or not a particular person was an employee or a self-employed worker. The decision took into account the particular circumstances of each case.⁴

222. The Government of *Turkey* felt that the absence of legislation on atypical workers and on rural employees within the meaning of Article 7 of the Convention constituted the main problem holding up the ratification of the Convention.

223. The Committee refers to paragraphs 128 to 137 and recalls that Article 7 of the Convention is drafted in a very flexible way, as ratifying States are only bound to promote the extension of the functions of the labour administration when national conditions so require and in so far as such activities are not already covered. It does not impose an obligation to produce a specific result but rather a best-efforts obligation; in other words, a ratifying State should encourage the extension of labour administration functions to cover workers who are not employed persons, and especially those referred to in the Article in question. Furthermore, it does not require an immediate extension because this may, if necessary, be carried out by gradual stages. In any event, the Convention does not include a specific obligation to have legislation covering the categories of workers mentioned under Article 7 as a condition for ratification.

224. The Government of *New Zealand* doubted whether the consultation and negotiation processes undertaken in labour administration between the Government and employers’ and workers’ organizations, and with other public

⁴ The New Zealand Employers’ Federation agreed with this position, while the New Zealand Council of Trade Unions noted in the government report the absence of an assessment of the effectiveness of the system of labour administration, the absence of real consultations on the review of minimum wage legislation, and inadequate level of resourcing of the labour inspectorate.

bodies, were consistent with the provisions of the Convention. As the Government's policy is not to ratify an international Convention unless it is satisfied that there is full compliance with all requirements of the Convention, the Government is not presently in a position to ratify the Convention.

225. The Committee refers to paragraphs 169 to 191 above and to a Memorandum of the ILO⁵ in which the nature and extent of the process of "consultation, cooperation and negotiation" are examined. It is up to each country to decide, in accordance with its national law and practice in force, what should be the subject, the level and the form of consultation, cooperation and negotiation. It should also be noted that Article 5 of the Convention only requires arrangements "appropriate to national conditions".

226. The federal Government of *Canada* pointed out several problems concerning the scope of the Convention. Canadian provincial jurisdictions excluded certain workers from coverage. The Government cited the doubt as to whether the requirements, in particular, of Article 6, paragraph 2(b) and (d), were applied, for example, to agricultural and domestic workers, in every provincial jurisdiction in *Canada* where such workers were excluded from labour legislation, as presenting a difficulty for ratification.

227. The Committee recalls that a memorandum of the International Labour Office examined this issue in 1987⁶ at the request of the Government of *Canada*. The relevant extract from this memorandum is as follows:

16. (...) it may be observed, firstly, that as the Government rightly remarks, the focus of Convention No. 150 is on the establishment of a system of labour administration and not on the scope of labour legislation. Article 4 of the Convention lays down the obligation for a ratifying State to "ensure the organization and effective operation ... of a system of labour administration".

17. From the definitions given in Article 1(a) and (b) of the Convention, this obligation involves the organization and operation of all public administration bodies responsible for and/or engaged in public administration activities in the field of national labour policy.

18. The nature and scope of such "activities in the field of national labour policy" are not defined by the Convention. However, certain elements are given, in particular, by its Article 6.

19. Article 6, paragraph 1, of the Convention provides, as follows:

1. The competent bodies within the system of labour administration shall, as appropriate, be responsible for or contribute to the preparation, administration, coordination, checking and review of national labour policy, and be the instrument within the ambit of public administration for the preparation and implementation of laws and regulations giving effect thereto.

20. Article 6, paragraph 2, refers more specifically to employment policy (subparagraph (a)), conditions of work and working life and terms of employment, defects and abuses in these conditions and terms, and proposals on means to overcome them, taking into account national laws and regulations and national practice (subparagraph (b)); services and technical advice to employers and workers and their organizations (subparagraphs (c) and (d)).

⁵ See ILO: Memoranda prepared by the International Labour Office in reply to requests for clarification concerning instruments adopted by the International Labour Office, paras. 16 to 21, document GB.238/22/5, 238th Session, Geneva, 1987.

⁶ *ibid.*, paras. 16 to 21.

21. As can be seen from the provisions of Article 6, labour administration activities include, but are not limited to, the preparation and implementation of relevant legislation. The system of labour administration must have the capacity to carry out all these activities such as specified by Article 6, in respect of categories of persons coming within the scope of the Convention.

22. In respect of the categories of workers referred to by the Government of Canada, namely, agricultural, domestic and self-employed workers, it may be noted that Article 7 of the Convention provides for the progressive extension, of the functions of the system of labour administration, when national conditions so require, to certain "categories of workers who are not in law, employed persons". Workers to whom coverage of the Convention may be so extended include tenants and sharecroppers and self-employed workers in the informal sector, as defined in subparagraphs (a) and (b) of Article 7. On the other hand, agricultural workers (e.g. wage-earners in agriculture) in general, and domestic workers, all come within the *initial* scope of the Convention, and must be covered by the activities of the system of labour administration referred to above.

23. To conclude, in reply to point 2 of the query of the Government of Canada, it may be said that the exclusion of agricultural, domestic and self-employed workers from the coverage of labour legislation would not prevent compliance with the Convention, which does not include a specific obligation to have legislation covering those workers, as a condition for ratification. The Convention would require, however, that the system of labour administration should have the capacity and competence for identifying the need for legislation covering these workers (bearing in mind the provisions of Article 7 concerning tenants and sharecroppers and self-employed persons) and for introducing and implementing such legislation, if necessary, as well as the capacity for carrying out all the other activities contemplated by the Convention in respect of the workers concerned.

228. According to the Government of *Belgium*, the federal structure of the State would constitute an obstacle delaying ratification of Convention No. 150. The Government pointed out that laws and regulations were constantly evolving. They were, however, in line with most of the provisions of the Convention. It mentioned that procedures for ratification were under way and that the national Parliament had already given its approval. However, according to the new institutional reforms in Belgium, it was necessary to obtain the approval of community and regional assemblies because certain issues were a matter for the regions and communities. These procedures had not yet been completed at the present time.

229. As the Committee pointed out in its 1985 General Survey on labour inspection,⁷ it would seem that where the division of responsibility prevented the taking of measures of general application, the establishment or development of machinery for consultation between the federal authorities and those of the federated units, would contribute to overcoming this difficulty. To date, a number of federal States have in fact ratified Convention No. 150.⁸

230. The Government of *South Africa* expressed certain difficulties in connection with Article 10 of the Convention. Indeed, the quality and training

⁷ ILC: 71st Session, 1985, Report III (Part 4B), para. 304.

⁸ Convention No. 150 has been ratified by the following federal member States: *Australia, Germany, Switzerland, United States*.

of staff in the labour administration system could be improved. It was thus important to provide more dynamic career paths, and the status of some officials, particularly labour inspectors, could be improved to enable them to carry out their jobs more effectively. However, the Government of South Africa pointed out that a new human resources development strategy was being developed which would form the basis for the formulation of a new Human Resources Development Act. This Act was intended to replace both the Manpower Training Act 1981 and the Guidance and Placement Act 1981. The drafting of the new Act was due to commence on 1 October 1996 so that it could be promulgated during the 1997 parliamentary session.

231. The Government of *Belize* pointed out that the legislation in force should be revised to give effect to the provisions of the Convention.

232. The Government of *Kuwait*, stated that Convention No. 150 will be examined for ratification after the adoption of the new labour law.

233. The Government of *Romania* stated that a complex process of reform in the area of labour administration was in progress and its final stage was planned for the next two years. As a result of this reform, tripartite administrative institutions and bodies would be set up to deal with unemployment and social insurance funds. In 1995, the Government submitted bills concerning labour administration to Parliament — these included: a bill on the organization and operations of the Economic and Social Council; a bill on the establishment of the National Employment and Vocational Training Agency; a bill on social insurance; and a bill on collective agreements.

234. Without referring to any difficulties which might prevent ratification of the Convention, the Government of the *Russian Federation* stated that the President of the Russian Federation had asked the Government in 1994 to submit proposals to amend the national legislation (for example the Labour Code, Fundamentals of Safety and Health Legislation) so that Conventions Nos. 150 and 81 might be ratified.⁹

235. The Government of *Tajikistan* mentioned that it was examining the possibility of ratification. Furthermore, the Ministry of Justice had recommended submitting the text of the Convention to the working party entrusted with drafting a Labour Code. The provisions of the Convention would serve as guidelines for this work.

236. The Government of *Dominica* referred to economic constraints — without specifying these — to explain that its labour administration system had not fully developed. It referred to these difficulties in respect of Article 10 of the Convention and Paragraphs 22 to 26 of the Recommendation.

237. The Government of *Madagascar* felt that the only difficulty preventing ratification of the Convention was of a budgetary nature. It felt, however, that it was more urgent, at this stage, to focus on Conventions dealing

⁹ See para. 4 of Decree No. 850 of the President of the Russian Federation on the state inspection and supervision of observance of labour legislation, of 4 May 1994.

with fundamental rights, which Madagascar had not yet ratified. In this respect, the Government mentioned the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

238. The Government of *Mozambique* pointed out that it was difficult to ratify the Convention because the country was undergoing a reform of its political and economic system. Furthermore, Mozambique lacked the material means and financial resources to ensure an adequate application of the Convention, particularly Article 10.

239. As far as the Government of *Uganda* was concerned, the major obstacle to ratification of the Convention was the lack of financial and logistic resources. In this respect, the Government made a link between Convention No. 150 and the Labour Inspection Convention, 1947 (No. 81), the latter was already ratified by Uganda, because it felt that the provisions of both these Conventions were similar. However, it also noted that its system of labour inspection was not in full compliance with the principles of Convention No. 81. In March 1996, the ILO sent a mission to Uganda to examine problems linked to the labour administration system.

240. The Government of *Ethiopia* pointed out that its transition to a market economy obliged it to overhaul all its legislation at present in force.

241. According to the Government of *Ukraine*, the economic difficulties with which the country was grappling already caused problems of application of ratified Conventions; consequently, it was not envisaged to ratify new Conventions at this stage.

242. The Government of *Viet Nam* mentioned that it was in the process of reforming its labour legislation and legislation and practice on labour administration. Particular attention had to be devoted to improving labour inspection. Given the new mechanisms established, the Government felt that some time was still needed to make them fully operational. Consequently, it believed that it was not appropriate to ratify the Convention at this stage.

243. The Government of *Eritrea* explained that its present labour legislation was of a transitory nature which became law only in 1991, when the country became independent. Furthermore, the preparatory work concerning the drafting of the Constitution had not yet been completed. The Government stressed, in general terms, its intention of ratifying relevant ILO Conventions once the preparatory work was over.

244. The Government of *Estonia* pointed out that the provisions of ILO Conventions were taken into consideration in the rapid process of development of national legislation.¹⁰ The Government regretted, in its report, not being

¹⁰ In this context, the Estonia Confederation of Employers' Organizations wished to participate in the preparatory work of draft legislation, at least in the area of employment legislation and consultations with the social partners.

able to apply immediately in practice provisions of the relevant ILO Conventions.

245. The Committee is aware of the fact that a number of countries in transition are experiencing serious economic crises. The political, economic and social upheavals with which some countries are having to cope in no way undermine the relevance of the Convention. On the contrary, this instrument serves to stress the importance of having an efficient and consistent system of labour administration for introducing or consolidating social democracy advocated by the ILO. The Committee hopes that ratification will be possible in the near future for these countries.

246. A number of governments pointed out that, generally speaking, there were no specific difficulties as far as the ratification of the Convention was concerned. In this respect, they stated that their national legislation was in line with the requirements of the Convention (for example, *Brazil, Colombia, Côte d'Ivoire, Republic of Korea*). The Government of *Côte d'Ivoire*, for example, noted that the organization of its system of labour administration was in line with that provided for by the Convention. Ratification would therefore involve no changes in the legislation at present in force.

247. Given these statements on the absence of difficulties in law or in practice, the Committee hopes that these countries will be in a position to ratify the Convention in the near future.

III. Prospects for ratification

248. Convention No. 150 came into force in October 1980 and, up to 13 December 1996, had been ratified by 39 countries. The Committee notes that Convention No. 150 was ratified by the *United States* in 1995 and by *Namibia* in 1996. There are prospects for further ratification, as may be seen from the information supplied by governments and reported below.

249. According to the information communicated, several Governments (*Antigua and Barbuda, Bahamas, Belgium, Oman, Venezuela*) envisage the ratification of the Convention. The Governments of *Antigua and Barbuda* and *Belgium* report that the Convention has been submitted to the competent authority with a view to ratification; the Government of *Antigua and Barbuda* hopes that the ratification procedures will be completed in 1997. The Government of *Bahamas* also points out that the ratification procedure has already started at the national level. The Government of *Venezuela* states that this procedure is under way.

250. Several Governments (*Ethiopia, Niger, Romania, Viet Nam*) indicate their intention to ratify the Convention once the revision of their legislation has been completed. The Government of *Niger*, in particular, hopes that it will be in a position as soon as possible to ratify the Convention. The Government of *Viet Nam* will examine the possibility of ratification of the Convention when the present process of reform is over.

251. Finally, a number of countries stated their intention to examine the possibility of ratification in the future (*Angola, Colombia, Republic of Korea, Mozambique, Tajikistan*). According to the information provided by the Governments of *Angola* and *Tajikistan*, ratification was only a matter of waiting for the opportune moment. The Government of *Colombia* mentioned that it was adopting measures with a view to setting up a permanent tripartite body on wage and labour policy that would permit in the future for the ratification of this Convention. The Government of the *Republic of Korea* pointed out that there was no major obstacle hindering the ratification of the Convention and that it was going to take into consideration all the aspects of the question when studying such ratification. The Government of *Mozambique* was counting on technical assistance from the ILO to allow for ratification.

252. The Government of *Estonia* stated that it had not yet taken a final decision concerning the ratification of the Convention.

253. The Government of *Sierra Leone* reported that once the new legislature is in office the Convention would be examined with a view to possible ratification.

254. In the *Czech Republic*, consideration has been given to the provisions of the Convention since 1989, the year when a new system of labour administration had been established. The Government stated that it was awaiting the Committee's General Survey and that it would subsequently examine the possibility of ratifying the Convention.

255. A number of Governments (*Bangladesh, China, Dominica, Kuwait, Mauritius, New Zealand, Panama, Senegal, Syrian Arab Republic, Turkey*) reported that they were not envisaging the ratification of the Convention. The Government of *Bangladesh* pointed out that its national law and practice in force were relevant to the Convention and Recommendation, but it did not feel that ratification was necessary, as did the social partners. The Government of *China* stated that Convention No. 150 was not included amongst those ratifications considered to be a priority, according to the programme of ratification established by the Government and the needs of the country. The Government of *Kuwait* stated that ratification would not be considered until the new labour law was promulgated. The Government of *Turkey* mentioned that it was not envisaging ratification in the near future. The Governments of *New Zealand, Panama* and *Senegal* stressed that they did not intend taking measures to give effect to the provisions of the Convention. The Government of the *Syrian Arab Republic* reported that the Council of Ministers had recommended not approving the ratification of the Convention for the time being.

256. The Committee notes with interest the intention of some countries to comply with international labour Conventions in general and the provisions of Convention No. 150 in particular. It regrets that it did not receive more detailed information which would have enabled it to assess fully the actual nature of the difficulties encountered. The Committee feels that ratification of Convention No. 150 would further the cause of legislative reform under way in a number of countries; indeed, it would provide the institutional framework and tripartite

cooperation which would ultimately help to pave the way for the adoption of national legislation with the cooperation of all the parties concerned. The Committee hopes that with ILO assistance to countries requesting it, there might be an improvement in the systems of labour administration in the near future. Furthermore, the Committee is pleased to note that a number of States could ratify the Convention in the relatively near future. It hopes that this will indeed be the case.

FINAL REMARKS

257. Convention No. 150 differs from many other ILO instruments in that the standards which are contained in the instrument provide general guidelines rather than attempting to prescribe specific requirements with respect to labour administration. It is this quality which is one of its great strengths in that it allows flexibility in achieving its aims and permits a variety of approaches to be adopted which can take appropriate account of different and changing national circumstances.

258. Both instruments remain appropriate and relevant to current conditions and provide vital encouragement to member States to enhance their labour administration by either developing a systematic, coordinated and collaborative approach or by further improving their techniques in effective administration. They can therefore apply to all member States regardless of the stage of development of their systems. They encourage, as appropriate, best practice for each member State and allow for differing stages of development and improvement.

259. The Convention and the Recommendation are instruments with dynamic provisions that reflect the major themes and values promoted by the ILO and in particular the paramount importance of a tripartite approach to labour administration. Today all member States are confronting in various degrees the unsettling effects of rapid change brought about by globalization of the economy, the increasing influence of market economies, implementation of structural adjustment programmes, technological innovation, increasing privatization of public enterprises, restructuring of enterprises and dismantling of public monopolies with the associated anti-competitive policies, in addition to the pressure to reduce government spending. These are the circumstances which reinforce the need for tripartite collaboration in developing strategies to adapt to these challenges in a planned and organized manner.

260. The Committee considers that there are many benefits which flow to member States from ratification of the Convention. They include the following:

- There is a public commitment by the ratifying member State to the importance of improving the quality of its labour administration which is demonstrable to its community as well as the social partners.
- The overt commitment by the ratifying member State to improvement of labour administration provides reassurance to other States with which it may have geographic, economic or social links or other relationships that it may wish to develop.

- Ratification encourages member States to participate in, share and have dialogue about differing experiences and methods of improvement of labour administration.
- Ratification not only focuses attention on the importance of sound and effective labour administration, but also encourages innovative practices in order to respond appropriately to the demands of our complex and changing economic, technological, social and political environments. Innovation is not limited to those member States with the most highly developed systems but is equally applicable to those member States with less-developed systems, both may benefit from each other. Consideration of the varied experiences is likely to be of benefit to all member States.
- Ratification or a stated intention to ratify makes available to the member States the valuable technical assistance of the ILO. As referred to in some detail in paragraphs 201 to 203, such assistance could take the form of expert and experienced advisory services, support for technical cooperation activities, training programmes, informing member States of the most up-to-date best practices on all aspects of labour administration as well as arranging regional meetings of States to discuss common problems.

261. With reference to paragraphs 207 to 247, where the Committee summarized a number of matters raised by various member States concerning the ratification of the Convention, the Committee wishes to emphasize that a number of issues raised by member States, notably in connection with Articles 2, 7, 9 and 10 of the Convention, do not seem to constitute impediments to ratification. The Articles to which they refer do not impose an obligation on a State to produce a specific result but rather to use their best endeavours to improve labour administration, taking into account national conditions. It therefore would urge governments to reconsider the benefits which can be derived by their States from ratification.

262. This survey has reinforced the Committee's view that labour administration can be enhanced in many ways by ratifying member States by considering adoption of the following practices. The practices set out below have come to the attention of the ILO through its experience and from the survey. Although most are not obligatory requirements of the Convention, they are ways indicating in what manner labour administrative systems may be improved:

- developing not only long and short-term strategies in all aspects of labour administration but also specific achievable priority goals, and to do so in collaboration with the social partners;
- creating opportunities for meaningful consultation with social partners at all stages of development of labour standards and employment policy. The earlier the better. It may commence with discussion even before any draft document is available. The ILO experience has been that discussion at the earliest stage is more likely to enhance the quality of the product as well as increase the likelihood of its acceptance and successful implementation;

- creating opportunities to involve the social partners at every level of development, implementation and review of labour standards and employment policy;
- considering the opportunities for delegation and devolution of appropriate labour administration functions to other bodies both governmental and non-governmental in order to obtain efficiencies and cooperation;
- ensuring that those involved in labour administration are not only qualified but continue to update their knowledge and be given adequate financial and material resources to do so;
- ensuring that the arm of the government responsible for labour administration receive a fair share of the financial resources of the State;
- availing themselves of ILO technical assistance and ensuring that this assistance is appropriately used;
- actively reviewing their labour standards by assessing the effectiveness of past practices. Such review should include ensuring that appropriate information is collected, maintained and is made available to the social partners and that the process of review also involves the social partners;
- States communicating with each other either directly or through the ILO, especially through regional meetings, about best practices in labour administration, so that all benefit from knowledge and experience about the relative effectiveness or indeed failures of various practices;
- recognizing the importance and value of research concerning all aspects of labour administration, appreciating that research encourages and is dependent upon the systematic retention of relevant information. The Committee points out that research is best conducted in an environment of consultation and collaboration. Properly designed research requires reliable funding but is likely to point to efficiencies and cost savings;
- considering the most effective ways in which governments can contribute to achieving harmonious labour relations by developing strategies to increase the dialogue with and between the social partners with full recognition of the autonomy of both the employer and worker organizations;
- identifying, in conjunction with the social partners, the social groups and special categories of persons who may not otherwise be protected by other ILO instruments such as the self-employed, members of cooperatives, seasonal non-wage-earners, homeworkers, domestic staff and other persons on contracts related to the performance of work. This would enable governments to assess the conditions of these important groups in the light of national policy;
- implementing a national occupational safety and health policy in consultation with the social partners and deploying labour inspection services which can have both preventive and remedial functions as referred to above;

- ensuring that all measures to maintain the financial equilibrium of social security schemes, including possible privatization, are taken in conformity with the principles contained in international labour standards and pursuant to genuine dialogue with the social partners and any other representatives of the protected persons;
- ensuring that there are appropriate mechanisms in place which give effective protection for minimum wage fixing whether it be by legislation or through the use of collective agreements; in this connection, the Committee draws the attention of States to its 1992 General Survey.

263. The range of approaches and choices described in the survey demonstrate the flexibility and extent to which the Convention and Recommendation can take account of the broad spectrum of national situations and conditions. Both instruments can be extremely useful when preparing national and social labour policies. The instruments also require that the State should take responsibility for labour administration and encourage tripartite consultation. The common theme is that best practice in labour administration is brought about by collaboration and dialogue. The Committee hopes that this flexibility will enable States to consider ratification of this important Convention.

APPENDIX I

Text of the substantive provisions of Convention No. 150 and Recommendation No. 158

Labour Administration Convention, 1978 (No. 150)

Article 1

For the purpose of this Convention —

- (a) the term “labour administration” means public administration activities in the field of national labour policy;
- (b) the term “system of labour administration” covers all public administration bodies responsible for and/or engaged in labour administration — whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralised administration — and any institutional framework for the co-ordination of the activities of such bodies and for consultation with and participation by employers and workers and their organisations.

Article 2

A Member which ratifies this Convention may, in accordance with national laws or regulations, or national practice, delegate or entrust certain activities of labour administration to non-governmental organisations, particularly employers' and workers' organisations, or — where appropriate — to employers' and workers' representatives.

Article 3

A Member which ratifies this Convention may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers' and workers' organisations.

Article 4

Each Member which ratifies this Convention shall, in a manner appropriate to national conditions, ensure the organisation and effective operation in its

territory of a system of labour administration, the functions and responsibilities of which are properly coordinated.

Article 5

1. Each Member which ratifies this Convention shall make arrangements appropriate to national conditions to secure, within the system of labour administration, consultation, co-operation and negotiation between the public authorities and the most representative organisations of employers and workers, or — where appropriate — employers' and workers' representatives.

2. To the extent compatible with national laws and regulations, and national practice, such arrangements shall be made at the national, regional and local levels as well as at the level of the different sectors of economic activity.

Article 6

1. The competent bodies within the system of labour administration shall, as appropriate, be responsible for or contribute to the preparation, administration, co-ordination, checking and review of national labour policy, and be the instrument within the ambit of public administration for the preparation and implementation of laws and regulations giving effect thereto.

2. In particular, these bodies, taking into account relevant international labour standards, shall —

- (a) participate in the preparation, administration, co-ordination, checking and review of national employment policy, in accordance with national laws and regulations, and national practice;
- (b) study and keep under review the situation of employed, unemployed and underemployed persons, taking into account national laws and regulations and national practice concerning conditions of work and working life and terms of employment, draw attention to defects and abuses in such conditions and terms and submit proposals on means to overcome them;
- (c) make their services available to employers and workers, and their respective organisations, as may be appropriate under national laws or regulations, or national practice, with a view to the promotion — at national, regional and local levels as well as at the level of the different sectors of economic activity — of effective consultation and co-operation between public authorities and bodies and employers' and workers' organisations, as well as between such organisations;
- (d) make technical advice available to employers and workers and their respective organisations on their request.

Article 7

When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the

extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in co-operation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons, such as —

- (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
- (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice;
- (c) members of co-operatives and worker-managed undertakings;
- (d) persons working under systems established by communal customs or traditions.

Article 8

To the extent compatible with national laws and regulations and national practice, the competent bodies within the system of labour administration shall contribute to the preparation of national policy concerning international labour affairs, participate in the representation of the State with respect to such affairs and contribute to the preparation of measures to be taken at the national level with respect thereto.

Article 9

With a view to the proper co-ordination of the functions and responsibilities of the system of labour administration, in a manner determined by national laws or regulations, or national practice, a ministry of labour or another comparable body shall have the means to ascertain whether any parastatal agencies which may be responsible for particular labour administration activities, and any regional or local agencies to which particular labour administration activities may have been delegated, are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them.

Article 10

1. The staff of the labour administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences.

2. Such staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties.

Labour Administration Recommendation, 1978 (No. 158)**I. GENERAL PROVISIONS**

1. For the purpose of this Recommendation —
 - (a) the term “labour administration” means public administration activities in the field of national labour policy;
 - (b) the term “system of labour administration” covers all public administration bodies responsible for and/or engaged in labour administration — whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralised administration — and any institutional framework for the co-ordination of the activities of such bodies and for consultation with and participation by employers and workers and their organisations.
2. A Member may, in accordance with national laws or regulations, or national practice, delegate or entrust certain activities of labour administration to non-governmental organisations, particularly employers’ and workers’ organisations, or — where appropriate — to employers’ and workers’ representatives.
3. A Member may regard particular activities in the field of its national labour policy as being matters which in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers’ and workers’ organisations.
4. Each Member should, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated.

**II. FUNCTIONS OF THE NATIONAL SYSTEM
OF LABOUR ADMINISTRATION***Labour standards*

5. (1) The competent bodies within the system of labour administration should — in consultation with organisations of employers and workers and in a manner and under conditions determined by national laws or regulations, or national practice — take an active part in the preparation, development, adoption, application and review of labour standards, including relevant laws and regulations.
 - (2) They should make their services available to employers’ and workers’ organisations, as may be appropriate under national laws or regulations, or national practice, with a view to promoting the regulation of terms and conditions of employment by means of collective bargaining.
6. The system of labour administration should include a system of labour inspection.

Labour relations

7. The competent bodies within the system of labour administration should participate in the determination and application of such measures as may be necessary to ensure the free exercise of employers' and workers' right of association.

8. (1) There should be labour administration programmes aimed at the promotion, establishment and pursuit of labour relations which encourage progressively better conditions of work and working life and which respect the right to organise and bargain collectively.

(2) The competent bodies within the system of labour administration should assist in the improvement of labour relations by providing or strengthening advisory services to undertakings, employers' organisations and workers' organisations requesting such services, in accordance with programmes established on the basis of consultation with such organisations.

9. The competent bodies within the system of labour administration should promote the full development and utilisation of machinery for voluntary negotiation.

10. The competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers' and workers' organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.

Employment

11. (1) The competent bodies within the system of labour administration should be responsible for or participate in the preparation, administration, co-ordination, checking and review of national employment policy.

(2) A central body of the system of labour administration, to be determined in accordance with national laws or regulations, or national practice, should be closely associated with, or responsible for taking, appropriate institutional measures to co-ordinate the activities of the various authorities and bodies which are concerned with particular aspects of employment policy.

12. The competent bodies within the system of labour administration should co-ordinate, or participate in the co-ordination of, employment services, employment promotion and creation programmes, vocational guidance and vocational training programmes and unemployment benefit schemes, and they should co-ordinate, or participate in the co-ordination of, these various services, programmes and schemes with the implementation of general employment policy measures.

13. The competent bodies within the system of labour administration should be responsible for establishing, or promoting the establishment of, methods and procedures for ensuring consultation of employers' and workers' organisations, or — where appropriate — employers' and workers' representatives, on employment policies, and promotion of their co-operation in the implementation of such policies.

14. (1) The competent bodies within the system of labour administration should be responsible for manpower planning or where this is not possible should participate in the functioning of manpower planning bodies through both institutional representation and the provision of technical information and advice.

(2) They should participate in the co-ordination and integration of manpower plans with economic plans.

(3) They should promote joint action of employers and workers, with the assistance as appropriate of public authorities and bodies, regarding both short- and long-term employment policies.

15. The system of labour administration should include a free public employment service and operate such a service effectively.

16. The competent bodies within the system of labour administration should, wherever national laws and regulations, or national practice, so permit, have or share responsibility for the management of public funds made available for such purposes as countering underemployment and unemployment, regulating the regional distribution of employment, or promoting and assisting the employment of particular categories of workers, including sheltered employment schemes.

17. The competent bodies within the system of labour administration should, in a manner and under conditions determined by national laws or regulations, or national practice, participate in the development of comprehensive and concerted policies and programmes of human resources development including vocational guidance and vocational training.

Research in labour matters

18. For the fulfilment of its social objectives, the system of labour administration should carry out research as one of its important functions and encourage research by others.

III. ORGANISATION OF THE NATIONAL SYSTEM OF LABOUR ADMINISTRATION

Co-ordination

19. The ministry of labour or another comparable body determined by national laws or regulations, or national practice, should take or initiate measures ensuring appropriate representation of the system of labour administration in the administrative and consultative bodies in which information is collected, opinions are considered, decisions are prepared and taken and measures of implementation are devised with respect to social and economic policies.

20. (1) Each of the principal labour administration services competent with respect to the matters referred to in Paragraphs 5 to 18 above should provide periodic information or reports on its activities to the ministry of labour

or the other comparable body referred to in Paragraph 19, as well as to employers' and workers' organisations.

(2) Such information or reports should be of a technical nature, include appropriate statistics, and indicate the problems encountered and if possible the results achieved in such a manner as to permit an evaluation of present trends and foreseeable future developments in areas of major concern to the system of labour administration.

(3) The system of labour administration should evaluate, publish and disseminate such information of general interest on labour matters as it is able to derive from its operation.

(4) Members, in consultation with the International Labour Office, should seek to promote the establishment of suitable models for the publication of such information, with a view to improving its international comparability.

21. The structures of the national system of labour administration should be kept constantly under review, in consultation with the most representative organisations of employers and workers.

Resources and staff

22. (1) Appropriate arrangements should be made to provide the system of labour administration with the necessary financial resources and an adequate number of suitably qualified staff to promote its effectiveness.

(2) In this connection, due account should be taken of —

- (a) the importance of the duties to be performed;
- (b) the material means placed at the disposal of the staff;
- (c) the practical conditions under which the various functions must be carried out in order to be effective.

23. (1) The staff of the labour administration system should receive initial and further training at levels suitable for their work; there should be permanent arrangements to ensure that such training is available to them throughout their careers.

(2) Staff in particular services should have the special qualifications required for such services, ascertained in a manner determined by the appropriate body.

24. Consideration should be given to supplementing national programmes and facilities for the training envisaged in Paragraph 23 above by international co-operation in the form of exchanges of experience and information and of common initial and further training programmes and facilities, particularly at the regional level.

Internal organisation

25. (1) The system of labour administration should normally comprise specialised units to deal with each of the major programmes of labour administration the management of which is entrusted to it by national laws or regulations.

(2) For example, there might be units for such matters as the formulation of standards relating to working conditions and terms of employment; labour inspection; labour relations; employment, manpower planning and human resources development; international labour affairs; and, as appropriate, social security, minimum wage legislation and questions relating to specific categories of workers.

Field services

26. (1) There should be appropriate arrangements for the effective organisation and operation of the field services of the system of labour administration.

(2) In particular, these arrangements should —

- (a) ensure that the placing of field services corresponds to the needs of the various areas, the representative organisations of employers and workers concerned being consulted thereon;
- (b) provide field services with adequate staff, equipment and transport facilities for the effective performance of their duties;
- (c) ensure that field services have sufficient and clear instructions to preclude the possibility of laws and regulations being differently interpreted in different areas.

APPENDIX II

Ratifications of the Labour Administration Convention, 1978 (No. 150)

Date of entry into force: 11.10.1980

States	Ratification registered	States	Ratification registered
Algeria	26.01.1984	Jamaica	04.06.1984
Australia	10.09.1985	Latvia	08.03.1993
Belarus	15.09.1993	Mexico	10.02.1982
Burkina Faso	03.04.1980	Namibia	28.06.1996
Congo	24.06.1986	Netherlands	08.08.1980
Costa Rica	25.09.1984	Norway	19.03.1980
Cuba	29.12.1980	Portugal	19.01.1981
Cyprus	06.07.1981	San Marino	19.04.1988
Denmark	05.06.1981	Spain	03.03.1982
Egypt	05.12.1991	Suriname	29.09.1981
Finland	25.02.1980	Sweden	11.06.1979
Gabon	11.10.1979	Switzerland	03.03.1981
Germany	26.02.1981	Tunisia	23.05.1988
Ghana	27.05.1986	United Kingdom	19.03.1980
Greece	31.07.1985	United States	03.03.1995
Guinea	08.06.1982	Uruguay	19.06.1989
Guyana	10.01.1983	Venezuela	17.08.1983
Iraq	10.07.1980	Zaire	03.04.1987
Israel	07.12.1979	Zambia	19.08.1980
Italy	28.02.1985		

Total number of ratifications: 39

APPENDIX III

Table of reports due and received on the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978 (Article 19 of the Constitution)

Article 19 of the Constitution of the International Labour Organization provides that Members shall "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body" on the position of their law and practice in regard to the matters dealt with in unratified Conventions and Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5(e) of the above-mentioned article. Paragraph 6(d) deals with Recommendations, and paragraph 7(a) and (b) deals with the particular obligations of federal States. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 19, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 218th (November 1981) Session, the Governing Body decided to discontinue the publication of summaries of reports on unratified Conventions and on Recommendations and to publish only a list of reports received, on the understanding that the Director-General would make available for consultation at the Conference the originals of all reports received and that copies of reports would be available to members of delegations on request.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under article 19 of the Constitution appear in simplified form in a table annexed to Report III (Part 1B) of the Committee of Experts on the Application of Conventions and Recommendations.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

The reports which are listed below refer to the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978.

Member States	Convention No. 150		Recommendation No. 158
	Year of ratification	Article 19	Article 19
Afganistan		X	X
Albania		X	X
Algeria	1984		X
Angola		R	R
Antigua and Barbuda		R	R
Argentina		R	R
Armenia		X	X
Australia	1985		R
Austria		R	R
Azerbaijan		X	X
Bahamas		R	R
Bahrain		R	R
Bangladesh		R	R
Barbados		X	X
Belarus	1993		X
Belgium		R	R
Belize		R	R
Benin		X	X
Bolivia		X	X
Bosnia and Herzegovina		X	X
Botswana		R	R
Brazil		R	R
Bulgaria		R	R
Burkina Faso	1980		R
Burundi		X	X
Cambodia		X	X
Cameroon		R	R
Canada		R	R
Cape Verde		R	R
Central African Republic		X	X
Chad		X	X
Chile		R	R

Member States	Convention No. 150		Recommendation No. 158
	Year of ratification	Article 19	Article 19
China		R	R
Colombia		R	R
Comoros		X	X
Congo	1986		X
Costa Rica	1984		R
Côte d'Ivoire		R	R
Croatia		R	R
Cuba	1980		R
Cyprus	1981		R
Czech Republic		R	R
Denmark	1981		R
Djibouti		X	X
Dominica		R	R
Dominican Republic		X	X
Ecuador		R	R
Egypt	1991		R
El Salvador		R	R
Equatorial Guinea		X	X
Eritrea		R	R
Estonia		R	R
Ethiopia		R	R
Fiji		X	X
Finland	1980		R
France		R	R
Gabon	1979		X
Gambia		X	X
Georgia		X	X
Germany	1981		R
Ghana	1986		R
Greece	1985		R
Grenada		X	X
Guatemala		X	X

Member States	Convention No. 150		Recommendation No. 158
	Year of ratification	Article 19	Article 19
Guinea	1982		X
Guinea-Bissau		R	R
Guyana	1983		R
Haiti		X	X
Honduras		R	R
Hungary		R	R
Iceland		R	R
India		R	R
Indonesia		X	X
Iran, Islamic Rep. of		X	X
Iraq	1980		R
Ireland		R	R
Israel	1979		R
Italy	1985		R
Jamaica	1984		X
Japan		R	R
Jordan		X	X
Kazakstan		X	X
Kenya		X	X
Korea, Rep. of		R	R
Kuwait		R	R
Kyrgyzstan		X	X
Lao People's Dem. Rep.		X	X
Latvia	1993		X
Lebanon		R	R
Lesotho		X	X
Liberia		X	X
Libyan Arab Jamahiriya		X	X
Lithuania		X	X
Luxembourg		X	X
Madagascar		R	R
Malawi		X	X

Member States	Convention No. 150		Recommendation No. 158
	Year of ratification	Article 19	Article 19
Malaysia		X	X
Mali		X	X
Malta		R	R
Mauritania		X	X
Mauritius		R	R
Mexico	1982		R
Moldova, Rep. of		X	X
Mongolia		R	R
Morocco		R	X
Mozambique		R	R
Myanmar		X	X
Namibia	1996	R	R
Nepal		X	X
Netherlands	1980		R
New Zealand		R	R
Nicaragua		X	X
Niger		R	R
Nigeria		X	X
Norway	1980		R
Oman		R	R
Pakistan		R	R
Panama		R	R
Papua New Guinea		X	X
Paraguay		X	X
Peru		X	X
Philippines		X	X
Poland		R	R
Portugal	1981		R
Qatar		R	R
Romania		R	R
Russian Federation		R	R
Rwanda		X	X

Member States	Convention No. 150		Recommendation No. 158
	Year of ratification	Article 19	Article 19
Saint Lucia		X	X
San Marino	1988		R
Sao Tome and Principe		X	X
Saudi Arabia		R	R
Senegal		R	R
Seychelles		X	X
Sierra Leone		R	R
Singapore		R	R
Slovakia		R	R
Slovenia		X	X
Solomon Islands		X	X
Somalia		X	X
South Africa		R	R
Spain	1982		R
Sri Lanka		X	X
St. Vincent and the Grenadines		X	X
Sudan		X	X
Suriname	1981		R
Swaziland		X	X
Sweden	1979		R
Switzerland	1981		R
Syrian Arab Republic		R	R
Tajikistan		R	R
Tanzania, United. Rep. of		X	X
Thailand		R	R
The former Yugoslav Republic of Macedonia		X	X
Togo		R	R
Trinidad and Tobago		X	X
Tunisia	1988		R
Turkey		R	R
Turkmenistan		X	X

Member States	Convention No. 150		Recommendation No. 158
	Year of ratification	Article 19	Article 19
Uganda		R	R
Ukraine		R	R
United Arab Emirates		R	R
United Kingdom	1980		R
United States	1995	R	R
Uruguay	1989		R
Uzbekistan		X	X
Venezuela	1983		R
Viet Nam		R	X
Yemen		X	X
Zaire	1987		R
Zambia	1980		R
Zimbabwe		X	X

R = Report received; X = Report not received.

Note: In addition, a total of 18 reports have been received, in respect of the following non-metropolitan territories: United Kingdom (Anguilla, Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Montserrat, St. Helena).



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